

HB

371



*Rodey*

# Alaska State Legislature

---

## House of Representatives

---

3111 "C" STREET, SUITE 410  
ANCHORAGE, ALASKA 99503  
(907) 581-2033

DURING SESSION  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4939

REPRESENTATIVE  
**ALYCE HANLEY**  
DISTRICT 9, SEAT B

MEMBER  
HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE  
REGULATION REVIEW COMMITTEE

*Presumptive Max 30  
unclassified felony*

April 29, 1988

MEMORANDUM

TO: Senator *Jag* Jalmar Kerttula, Chairman  
Senate Judiciary Committee

FROM: Representative Alyce Hanley *Alyce Hanley*

SUBJECT: HB 371 - "An Act relating to attempted murder in the first degree."

I would like to formally request a hearing on HB 371 which passed the House on April 28, 1988. This legislation is similar to SB 352 introduced by Senator Halford and cosponsored by 7 other Senators.

The reason for introducing HE 371 was to provide the opportunity for a judge to sentence a person convicted of attempted murder in the first degree to a maximum sentence of more than 20 years. This bill would change attempted murder in the first degree from a Class A Felony to an Unclassified Felony.

It's important to recognize that for a person to be guilty of attempted murder in the first degree, intent has to be proven. Because a person fails to achieve his goal or because the victim refuses to die, is not justification for the penalty to be so dramatically different from murder in the first degree.

Currently, attempted murder in the first degree is a Class A Felony with a presumptive sentence of five years and a maximum imprisonment of 20 years. This is identical to the sentencing for 1st degree assault. If mitigators and the calculation of "good time" are taken into account, an offender could be out in less than 2 1/2 years.

A compromise was achieved in the House Judiciary Committee and agreement was reached on a penalty similar to murder in the second degree. The Judiciary Committee Substitute for HB 371 provides for a definite term of imprisonment of at least five years but not more than 99 years.

## BILL EXPLANATION

SUBJECT: HB 371 - An act relating to attempted murder in the first degree

HB 371 will provide judges with the flexibility to sentence a person convicted of attempted murder in the first degree to a maximum sentence of more than 20 years. This bill changes attempted murder in the first degree from a Class A Felony to an Unclassified Felony. Section 1, 2, 3 and 4 simply add language to make attempted murder in the first degree an unclassified felony. Section 5 makes the penalty for attempted murder in the first degree the same as murder in the second degree, kidnapping or misconduct involving a controlled substance in the first degree.

### Background

A deliberate, intentional attempt to kill another person is one of the most heinous crimes that a person can commit. Only the completed murder itself could be more serious. The penalties prescribed under existing law do not reflect the seriousness of this conduct. Under present law, for example, a parent who improperly touches his child's genitals receives a more severe sentence than that imposed upon a person who deliberately, but unsuccessfully, attempted to kill the child.

In order for a person to be guilty of attempted murder in the first degree, intent has to be proved. Currently, attempted murder in the first degree is a Class A Felony with a presumptive sentence of five years and a maximum imprisonment of 20 years. This is identical to the sentencing for 1st degree assault. Mitigators are completely independent of the the calculation for "good time" which takes 1/3 off a given sentence. A judge can mitigate a sentence down to 1/2 of the presumptive sentence over 5 years. Under current law a sentence could be 2 1/2 years and the offender with still get good time of 1/3 off the sentence.

The Judiciary Committee Substitute for HB 371 is a compromise on the penalty section of the bill and provides for a definite term of imprisonment of at least five years but not more than 99 years. Good time will still apply to this sentence.

HB 371 Briefing Packet

TABLE OF CONTENTS

- I. . . . . HB 371 (Judiciary) and HB 371  
Bill Explanation
- II. . . . . Letters of Support
- \* Lt. Shirley Warner, Vice President  
Alaska Peace Officers Association
  - \* Lt. Mike Nielsen, Fairbanks Police Dept.  
"Salgado seeks reduced sentence",  
Fairbanks Daily News Miner
- III. . . . . Newspaper and Magazine Articles
- \* "Doctors tell grim story of child's abuse",  
Anchorage Daily News
  - \* "Woman's children often hurt", Anchorage Daily News
  - \* "Judge takes kids away from mom", Anchorage Daily News
  - \* "Father gets 26 years", Anchorage Daily News
  - \* "Couple charged with abuse of infant who's left in coma",  
Anchorage Daily News
  - \* "Newcomb has violent history", Anchorage Daily News
  - \* "Officers Shot; convict captured", Anchorage Daily News
  - \* "Prosecution: Hatred fueled murder", Anchorage Daily News
  - \* "Salvage yard explosion hurts 2", Anchorage Daily News
  - \* "Explosion victim still in critical condition",  
Anchorage Daily News
  - \* "Pathologist testifies at trial", Anchorage Daily News
  - \* "Burned boy wants dad kept in prison", Anchorage Daily News
- IV. . . . . Terms of Imprisonment and Authorized Fines in Revised  
Criminal Code
- V. . . . . Attorney General Memo and Analysis dated January 8, 1985,  
addressing attempted murder and solititation for murder

# ALASKA PEACE OFFICERS ASSOCIATION

DDC Coordinator  
P.O. Box 240106  
Anchorage, AK  
99524-0106  
(907) 786-1807

State APOA Office  
P.O. Box 240106  
Anchorage, AK  
99524-0106  
(907) 786-1807



January 19, 1988

Representative Alyce Hanley  
P.O. Box V  
Juneau, Alaska 99811

Dear Alyce,

I enjoyed our conversation in your office while I was in Juneau. Thank you for taking the time to talk with me. I hope you find our position statement to be helpful.

Let me confirm that I know there is no one in Juneau more supportive of law enforcement than you and we appreciate that.

I spoke with the Board of Directors about the sentence for Attempted Murder. I can safely say that for the examples given (Pfeil, had he lived, and the little girl who is now basically a vegetable) they felt 20 years was not enough. There was no consensus on the ending time (50, 60, 99, open ended). I suppose whatever you develop from your research you can count on our support.

I am more than willing to contact the APOA Chapter Presidents for them to poll their memberships for cases where attempted murder were, or could have been charged. I will also ask them about cases involving a solicitation to commit murder.

If there is any more I can do to help the passage of the bills the 'coalition' has outlined, or with the bills you sponsor please call.

Sincerely,

Lt. Shirley A. Warner  
Vice President, APOA  
786-6656

8 FEB 88

The Honorable Alyce Hanley  
Alaska State Representative  
P.O. Box V  
Juneau, AK 99811

FEB 1988  
RECEIVED

Dear Representative Hanley:

Lt. Shirley Warner of Anchorage Police Department has asked law enforcement officers to send you information concerning sentencings of attempted and solicitation of murder.

I worked the investigation concerning Dr. Salgado's hiring of a drug addict to kill Dr. Martino. The enclosed article from the Fairbanks Daily News Minor may be of some value to you. As you can see, this man who had a great deal of public trust and confidence, will once again prey on the unsuspecting public if released after serving only five years. That is a very short time for the heinous crime he committed.

Please call me if I can be of any further assistance. The complete case report (FPD C# 83-18178), is available if necessary.

Sincerely,

*Mike A. Nielsen*  
Mike A. Nielsen, Lieutenant  
Fairbanks Police Department  
(907) 459-6500

*656 7th Aven*

Enclosure:

*Fairbanks AK 99701*

Fairbanks Daily News Miner

## Salgado seeks reduced sentence

By KRIS CAPPS

Staff Writer

Fernando Salgado, a former Fairbanks neurologist, incarcerated for nearly four years for trying to arrange the murder of a rival neurologist in 1933, asked this week to have his sentence of 10 years without parole reduced.

The judge agreed to allow him parole eligibility at the discretion of the parole board, based on a 1986 change in state law. The law, which went into effect after Salgado's sentencing but which can be legally applied to his case, allows for automatic parole eligibility for consecutive sentences.

Salgado, 48, was sentenced to two consecutive five-year sentences without parole. He must serve the first five years of his sentence before he can meet Parole Board guidelines.

Salgado, 48, who was also a neurologist here, was convicted in 1984 of hiring one of his drug-addict patients to kill Dr. Ronald Martino, the other neurologist in town. He was also convicted of giving the hit man prescription drugs as payoff for the intended murder.

The hit man never did kill Martino. Instead, he secretly recorded conversations of he and Salgado discussing the contract murder, and eventually notified authorities.

As a result of the conviction, Salgado's license to practice medicine was permanently revoked on April 19, 1985.

According to letters written to Superior Court Judge Jay Hodges, which are now part of Salgado's public court file, Salgado says he is anxious to return to Spain upon his release.

"I am very tired, almost exhausted, from being incarcerated for such a long time," Salgado wrote in a March 1987 letter.

He said authorities at Hiland Mountain Correctional Center gave him a little corner of the jail greenhouse as a painting studio and he has become a serious artist since his incarceration. He said he has painted 121 oil paintings and sold every one of them.

He said he keeps his own piano in one of the classrooms and is allowed to keep a pet cat, which he occasionally is also allowed to take to cat shows.

"Just last Sunday, I took him to a cat show held at the Armory in Anchorage where he won 10 ribbons, all first place," Salgado wrote.

He also worked as program assistant to inmates in the jail's sex-offender program.

"For over two years now, I have been longing to return to Spain to

see my family and to live there for the remainder of my life," Salgado wrote. "If for some reason I do not enjoy living in my Native land, I might relocate to Argentina where I have many friends."

At this week's hearing, Salgado was described as a model prisoner who is currently assigned to a half-way house.

Defense Attorney Bill Bryson said Salgado refers to his criminal offense as "his crazy period." He also said Salgado promised never to get in that delusional state again.

### Larson to appear in benefit-concert

The Farthest North Chapter of the Alaska Peace Officers Association will present the Nitty Gritty Dirt Band and Nicolette Larson in concert May 7 for two shows at Hering Auditorium. Representatives of the association will be telephoning local businesses to sell advertising and tickets. Tickets can be ordered by calling 451-8577.

Proceeds from the shows will benefit area organizations such as youth hockey, basketball and football teams, the Boy and Girl Scouts, Women in Crisis Counseling and Assistance, and two college scholarships.

SECTION

# Metro Saturday C

Anchorage Daily News Saturday, November 1, 1966

## Doctors tell grim story of child's abuse

By SHERLA TOOMEY  
Daily News reporter

Tina Sweetlin's brain is bruken and blunted, like the brain of a 95-year-old woman who never learned to talk or walk or feed herself or control her bladder.

Tina will be 2 in January. Her father, Jimmy, has been convicted of fracturing her skull, of nearly drowning her, of turning her from an ordi-

nary baby into a twilight being — blind, retarded, permanently brain damaged, unlikely to ever be able to take care of herself.

Tina was Exhibit A Friday at the first of three court hearings to consider how much time Jimmy Sweetlin should spend in jail for what he did. And whether the child's mother, Margaret Sweetlin, should do any time

at all for not taking the baby to a doctor.

Tina squaled and fretted as pediatrician Jeff Brand inventoried for Superior Court Judge Seaborn Buckalew the outward signs of her inner damage — sightless eyes, permanently clenched thumbs, abnormal reflexes. Buckalew, a tall, distinguished-looking grandfather, came down from the bench and watched with

arms folded across his black robe as the prosecution table became an impromptu examining table.

Brand told the judge that Tina is probably also deaf, but her foster mother says she can tell voices apart, so may be not.

The demonstration didn't last very long. I think I've seen enough," said Buckalew, looking grim, as he has ever;

time this case has come before him.

Of three particularly horrible child abuse cases taken before a grand jury in March by Anchorage District Attorney Victor Krumm, Tina is the only victim not expected to heal. The two other children had broken bones and burns, but escaped brain damage. Their abusers have also been convicted and are await-

ing sentencing.

On June 26, Jimmy Sweetlin, 25, pleaded no contest to three counts of assault and one count of failing to get medical aid for his child. The complaint against him says he admitted holding Tina by her ankles when she was about a year old and dropping her ten feet to the floor on her

See Page C-3 ABUSED

## Mat-Su assembly turns to the right after fall elections

By CHRIS OERGEN  
Daily News reporter

PALMER — The Matanuska-Susitna Borough Assembly has veered onto a new course since this fall's elections as the sail under a more pro-development and regulation philosophy, according to some members of the new assembly majority.

Steve Cyren and John Muzgrove have generally made up the opposition. By neither Siragan nor Muzgrove ran for reelection this season and the two new assemblymen, Fred Lovd and Gary Silvers — seem to fall in step with Palmquist and Holmes.

At last week's assembly meeting, the first with the new majority, Palmquist





11/14/86

metro/

## Woman's children often hurt

### Witnesses testify during sentencing hearing

By SHEILA TOOMEY  
Daily News reporter

Bad things happen to the children of Margaret Sweetin.

At 6, Jimmy, had open welts from a belt buckle, up and down both legs, when the state finally took him in 1983. He always seemed to be hungry. Leroy was four and couldn't talk. When asked by a doctor to undress, he did so and automatically assumed a sexual position. The state took him in March.

And then there's Tina. She's almost 2 and not quite brain dead from being dropped on her head and held under water in the bathtub.

Margaret Sweetin says she never hurt her kids. And, in fact, she has not been charged with child abuse. It seems that Margaret Ann, as everyone calls her, has a weakness for men who like to beat up babies.

She and her current husband, Jimmy Sweetin, spent Thursday afternoon in an Anchorage courtroom for the second installment of a marathon sentencing hearing relating to Tina's injuries. Jimmy has pleaded no contest to three felony assault charges and a misdemeanor. He faces a maximum sentence of 46 years.

But Thursday's hearing focused mostly on Margaret Ann. She has been convicted of a single misdemeanor, of failing to get Tina's fractured skull medically treated. That's all she was indicted for.

District Attorney Victor Krumm said earlier in the case that Margaret Ann was charged in accordance with information available at the time her case went to the grand jury, in March.

Krumm has learned a lot more about Margaret Ann since then. Under his questioning, social workers, counselors, doctors and foster parents have been taking the witness stand and sharing that information with Judge Seaborn Buckalew. Buckalew can sentence her to a maximum of one year.

Margaret Ann is 25, but she's lived a lot in those years. She's been married three times and has borne five children. Three other pregnancies ended in miscarriage. Three of her children — Jimmy, Leroy and Tina — have been taken from her at different times. One, Valerie, she gave up voluntarily at birth.

The fifth, Christopher, 2 months old, remains in her care.

Listen to Virginia Sulesky, Leroy's foster mother, describe what the 4-year-old boy was like when she got him in March.

"He was like an uncaged little animal coming into the house. We thought he was crippled or something. He held his arms funny and walked with a gait. His skin

See Page B-3, CHILDREN



Carol Frantz looks out her window on an island in Flat Lake as he

## When a hovercraft

By CHRIS GIEGER  
Daily News reporter

**BIG LAKE** — In November, the ice sings to Art and Carol Frantz from all directions. Freezing water surrounds the couple's island home on Flat Lake, two lakes back from Big Lake and beyond the reach of roads. The shifting cracks perform a repertoire of mournful groans, bird-songs and occasional rifle shots.

But the Frantzes have paid a price for the winter symphony. With miles of water and four-wheel-drive roads between Art Frantz's home and his job in Anchorage, he has until recently faced an exceptional daily commute.

In the summer, Frantz boats about a mile across Flat Lake to his waiting car, then drives a back road to reach the highway. Winter is easy. He simply drives seven miles over Flat Lake, Mud Lake and Big Lake to the main road.

And in the isolating weeks of freeze-up and break-up, when the lakes are too solid to boat but too liquid to drive on, Frantz resorts to the only other alternative — a hovercraft.

"After about six months here, (Art) said, 'Whose idea was it to move up here?'" Carol Frantz said. "I said, 'It was yours.'"

On Aug. 1, Art Frantz retired from his job with Anchorage Municipal Light & Power. He doesn't miss rising at 4 a.m. every day to commute over ice, snow, water and dirt, he said. But thanks to their island location, the Frantzes' elaborate transportation set-up remains a necessity.

If not for the hovercraft, they'd now be spending their fourth week in a row trapped on the island by uncertain ice.



Art Frantz idles his

Being stranded in Flat Lake is not Carol Frantz's first time. Since the coup in 1980, she's suffered other Big Lake winter maladies. She

## Ship master

Continued from Page B-1

"But that's not the same." She glanced at her husband and laughed.

The Frantzies moved to Alaska in 1959 from the Pocomo region of Pennsylvania. He was working as an assistant foreman in a machine shop there, and figures that 20 years from then — he'd still be working in the machine shop.

"I didn't want to know what I was going to be doing in 20 years, so I came in

Alaska," he said. After almost 20 years in Anchorage, the Frantzies found their island paradise and made their move. Anticipating the transportation difficulties ahead, they bought the hovercraft first, along with several boats.

Not only did they have to reach the island, they had to ferry construction materials to remodel the A Iraira cabin already there.

The hovercraft is not a particularly fancy machine. Originally built of plywood,

Ar has substituted aluminum for the body. Three people can squeeze beneath its canvas canopy in a crutch.

A horizontal turbine creates a cushion of air between the hovercraft's rubber skirt and the ground. A vertical propeller pushes it forward with airboat style fins for steering. Two controls — a throttle and steering wheel — control everything. Although in this case control is a relative concept.

Careening without friction

across the lake, the machine turns from side to side like a confused cutting stone. If he pressed his luck, Frantz said, he could probably reach 100 miles an hour. But stopping is another story, about half way home he begins throttling back periodically, touching metal skids to the ice to prevent an unhappy landing.

You have to plan way ahead when you want to stop, Frantz said. Last year I hit the dock once.

## CHILDREN: Mother charged with failure to get help

Continued from Page B-1  
color was bad, almost ash-gray.

He couldn't feed himself with utensils. His speech was unrecognizable garble except for words like mama, papa or doggie. His condition could only have resulted from long-term neglect or worse, other witnesses testified.

Here's social worker Andy Linn, his voice cracking as he describes his first encounter with Leroy before the Sweeties were arrested.

"He came up to me. He gripped on to my leg. He grabbed my hand and he started to kiss my hand. We didn't have enough info-

mation to take custody. He didn't want us to leave but we left anyway.

Leroy was desperate, said Linn.

The Sweeties were arrested in March because of what happened to Tina. Jimmy Sweetin has admitted holding his daughter, then about 14 months, three feet off the ground and dropping her on her head. He has pleaded no contest to holding her head under water in the bathtub, although there is some dispute about how long he held her there.

Tina is not likely to improve. She has massive brain damage. She can't see, can't stand, can't talk, can't think. Leroy is doing better. He

## Considering bid for leadership job

He may be forced to cut two or three of his committee staff aides. He hopes the Democrats will retain his staff on the defense appropriations subcommittee, saying they are professionals.

Stevens said he will try to absorb his committee aides onto his personal staff but said "there may be two or three people that I have no place for."

Stevens said he will try to absorb his committee aides onto his personal staff but said "there may be two or three people that I have no place for."

Stevens said he will try to absorb his committee aides onto his personal staff but said "there may be two or three people that I have no place for."

Stevens said he will try to absorb his committee aides onto his personal staff but said "there may be two or three people that I have no place for."

lives in a nice house and goes to counseling. When she invites him to play said his father has the bathroom toys and often has the daddy doll hold the baby doll under water in the bathtub. He freezes and goes into a near trance when anyone chastises him, even mildly, his last: mother res titled.

Still Leroy is doing better. He has learned to speak in sentences. He has used his new skill to tell both his counselor and his foster mother that he doesn't want to go home because "mummy and daddy used to hurt me."

There hasn't been much discussion about Jimmy Sweetin's background but Margaret Ann didn't invent her parenting techniques. She learned how to bring up children from the people who brought her up.

She was neglected as a child and put for a while into foster care. She returned to her mother's home where when she has 13 or younger, her stepfather began to sexually abuse her, according to testimony. She was pregnant at 15 by him, and again two years later. Before he died, he had fathered her first three children, divorced her mother and married her.

When the sexual abuse be-

When the sexual abuse be-

gan, Margaret Ann told her mother about it but her mother refused to believe her, said Rosalie Nadreau of the Crisis Center. When the truth became undeniable, mom blamed Margaret Ann.

Over the years, Margaret Ann has gone from man to man, from boyfriend to husband even back to her stepfather once when no one else would take her in. And each of the men mentioned in court Thursday hurt Margaret Ann's children, said Krumm.

Many social agencies have tried to help Margaret Ann learn new ways but they have been hampered by her I.Q. of about 80 and by the well-taught lessons of her youth.

Regardless of whether her children are abused by her or by the men she chooses to live with, said Nadreau. "The result is the children Margaret Ann has produced have suffered pretty serious injury and abuse."

"She is a tragic young woman," Nadreau said. "She has had a really unfortunate life. I'm not sure that justifies inflicting pain on helpless children who didn't ask to be here."

The sentencing hearing is scheduled to continue next Friday.

at Sixth Avenue and Juneau Street at about 1:10 a.m. Weitz, 27, was in a pickup truck that matched one wanted in connection with a Gable Strip robbery.

When Officer Cindy Mitchell sought cover from Weitz's bullet, Weitz rammed into a concrete wall two blocks away. Police officers responding to Mitchell's call for help chased Weitz ducking shots and peering through his fire.

Hanson and another officer arrived on the scene with dogs to track the suspect. Hanson, who had his dog caught up with Weitz on Juneau Avenue off Melchior Street, according to the police report, Weitz was hiding in a dark spot between a large tree and a fence. Hanson was shooting a bullet proof vest for the shot struck him above the protection.

Other officers chasing Weitz another half block, surrounding him three times before capturing him through the dog.

## Snowstorm hits Juneau

The Associated Press

JUNEAU — The first snow of the season came in a big way to Juneau this week, throwing a wet, white blanket over the Alaska Municipal League's winter conference and catching road crew off-guard.

Juneau got 4.1 inches of snow between Sunday and Thursday according to the National Weather Service. Almost half of it fell Wednesday, leaving slushy streets and roadside snowbanks three and four feet high. Skies cleared Thursday.

The weather service said the average Juneau snowfall for the entire month of November is 11.6 inches.

The heavy fall Wednesday kept all major airline flights out of Juneau Municipal Airport, and with them, many people headed for the Mutual League conference. Its organizers were counting on the diverted flights arriving Thursday.

UP TO 29% OFF

Northaska

Arctic Survival Equipment

is a...  
factory...  
stomer...  
ind-fine...  
Some...  
ad then...  
about...  
ent in a...  
aid the...  
from a...  
Postal...  
erstate...  
taken...  
-postal...  
in said...  
aid the...  
ness is...  
by the...

to be a...  
e look...  
: insert...  
ication...  
printed...  
er that...  
pany...  
-ustom...  
Bureau...  
ou ran...  
mpany...  
-s and...  
Blvd.

shooter...  
include...  
I come...

# space agency

discussing the Challenger tragedy last January and the following investigation "was filled with doublespeak."

The seven-member shuttle crew, including teacher Christa McAuliffe, perished when Challenger exploded shortly after liftoff.

Lutz quoted a NASA official who said:

"The normal process during the countdown is that the countdown proceeds, assuming we are in a go posture, and at various points during the countdown we tag up the operational loops and face to face in the firing room to ascertain the facts that project elements that are monitoring the data and that are understanding the situation as we proceed are still in the go direction."

Morton Thiokol, the maker of the booster rocket, and Rockwell International, the main contractor to build the shuttle, also were cited by the committee.

"Officials of Morton Thiokol," Lutz said, "when asked why they reversed earlier decisions not to launch the abut-

See Back Page, DOUBLEPEAK

upper teens with north wind to 15 mph. Cloudy tonight with a low near 15. Snow likely Sunday with a high in the lower 20s.

High Friday.....18  
Low Friday morning.....13  
Normal High Nov. 21.....26  
Normal low Nov. 21.....13  
Record high Nov. 21 (1949).....50  
Record low Nov. 21 (1966).....13

STATE, NATIONAL  
WEATHER FORECASTS  
PAGE A-2

## index

Ann Landers.....	D-4
Bridge.....	D-4
Business.....	B-8
Classified.....	E-1
Comics.....	D-14
Horoscopes.....	D-16
Jeff Lowmire.....	D-3
Letters.....	B-11
Obituaries.....	B-12
Opinion.....	B-10
Religion.....	D-7
Sports.....	C-1
Social.....	B-4
Television.....	D-10
Today in Anchorage.....	D-16
Troublesooter.....	B-3

FOR HOME DELIVERY  
CALL 257-4400  
8 a.m. to 5 p.m.

problem of record number of homeowners falling behind on their monthly mortgage payments to AHFC, said Ron Lehr, the agency's executive director.

"It's one of those situations where you try to do a little bit here, and a little bit there, and a little bit there," Lehr said. "The package is \$40 a barrel oil... or some kind of major upturn in the economy."

Since the housing market

# Judge takes kids away from mom

By SHEILA TOOMEY  
Daily News reporter

A Superior Court judge reached through the back door of the criminal justice system Friday in an effort to save the children of Margaret Sweetin from a future filled with abuse and neglect.

Judge Seaborn Buckalew sentenced Sweetin to six months in jail for not helping her 14-month-old daughter, Tina, the day Sweetin's husband Jimmy deliberately dropped the baby on her head, fracturing her skull.

first spiraled into a nose-dive in 1985. AHFC has seen its delinquency rate climb from less than 2 percent in mid-1983 to 12.2 percent in October. To cope, AHFC instituted a program allowing hard-pressed homeowners to rent their homes and created an assumable loan program, yet delinquencies continued unabated.

In October, about one of

See Back Page, ANFC

she have no contact with any of her children unless a probation officer gives written permission.

He said he didn't think she should be allowed to visit the child because of testimony that the older ones become upset and fearful when she visits.

Buckalew also ordered that Sweetin not be allowed to live with any children for the next five years, a provision requested by Anchorage Dis-

See Back Page, NEGLECT

## How to call the

- Arts, Linda Blington
- Business news Bill Whitt
- Bus notes/cook Kathleen
- City Editor W.P. Dougherty
- Community Andrew Poirer
- Editorial page Susan Ne
- Homes Trish Brown
- Juneau Bureau John Lin
- Kenai Bureau Ronnie Ch
- Letters, Michael Cary
- Lifestyles Gudy Nelson
- Mail Su Bureau

## Classified advert:

- Anchorage
- Wasilla
- Anchorage hours 7 a.m. to 6 p.m. Monday thru day, 7:30 a.m. to 6 p.m. Tuesday thru Saturday, 9 a.m. to 2 p.m. Sunday
- Wasilla hours 8 a.m. to 5 p.m. Monday thru

786

Anchorage Daily News 11/21/86

# NEGLECT: Judge takes children away from mom

Continued from Page A

The Attorney General's office is acting as a safeguard against a possible future marriage between Sweetin and a man with young children. She plans to divorce Jimmy

"Painful, damaging evidence" left him with "absolutely no reservations" that any child in Sweetin's care was in physical danger, said Buckalew.

Sweetin's mother, sitting in the front row of the spectator section, with a younger daughter, cried as Buckalew reviewed the damage done to Tina Jimmy Sweetin was not there. He has pleaded no contest to three felony counts and is awaiting sentencing.

Until Friday, when she was led out of Buckalew's third-floor courtroom in handcuffs, Margaret Sweetin was free and had custody of her newest baby, 3-month-old Christopher Buckalew made clear his concern that state officials allowed this to happen and his belief that he had a special obligation to act because they had failed to

"It seems like it would be negligence on my part not to prohibit contact with Christopher as part of probation," Buckalew said. "I think I have got a primary responsibility to protect that child."

"That action has not been taken by the Attorney General's office."

Buckalew said he didn't want another judge presiding over some future trial with Christopher as the victim.

Defense attorney Glenn Cravez said the legislature has specifically reserved child custody decisions to family court and cautioned Buckalew that his sentence might be illegal. Krumm, while applauding the decision, said he didn't know if it would survive an appeal.

So far there have been three court hearings to consider the evidence against Margaret and Jimmy Sweetin. At each of these hearings there has been angry grumbling from social workers, lawyers, witnesses and others about the minor charge brought against Margaret and the fact that she still had Christopher. "I'm appalled that she was not charged with a felony," said Rosalie Nadeau, director of the Anchorage Crisis Center.

Assistant Attorney General Pat Kennedy, whose office made the decision to leave Christopher with his mother, said the state got limited legal rights to Christopher within a month of his birth.

"She still had the child because at the time we took custody she had only been charged with a misdemeanor," said Kennedy.

Krumm said the state took an abused child from Sweetin in 1983 and social workers knew before he did that she was more than an innocent bystander.

But Kennedy said Margaret Sweetin's "record all revolves around injury to her children by other people. The intention, if she moved in with any male, was to take physical



Defense attorney Glenn Cravez and defendant Margaret Sweetin listen to Judge Seaborn Buckalew during sentencing Friday.

custody of the child."

"Now that she's going to jail, I'm sure we're going to be taking custody."

Sweetin, 24, started life on the receiving end of abuse and neglect. As a child she was taken at least once from her home and placed in foster care. Her stepfather, now dead, sexually abused her and eventually fathered three children on her while she was in her early teens. Somewhere along the line, he divorced her mother and was allowed to marry Sweetin, a series of events Buckalew characterized as so bizarre it was like "taking a visit to another planet."

Sweetin has been married three times, had five children and three miscarriages. She will have no more children. She had a tubal ligation after Christopher's birth.

Except for one girl, given up for adoption at birth, all of her children have been abused or severely neglected, according to evidence presented in court. It appears from records compiled in Alaska, Illinois and other states, that the abuse — both physical and sexual — was committed by Sweetin's husbands and perhaps by some boyfriends along the way.

She has been accused only of neglecting her children, of not feeding them properly, of making them eat off the floor and spending their days in locked rooms until their physical and mental growth was stunted.

In March, her fourth child, Tina Sweetin, then about 14 months old, was rushed to the hospital by paramedics, a near-drowning victim. Margaret's husband, Jimmy Sweet-

in, was later charged with holding the baby's head under water for five minutes or more, causing severe and permanent brain damage. The child's fractured skull, an earlier injury, was discovered at that time, as was a bad burn.

Tina and Leroy, 4, the only other child then living with the Sweetins, were taken by the state and are now in foster homes, but Sweetin has not relinquished parental rights to them and Krumm expressed concern that they might someday be returned to her care.

In 1983, a 6-year-old was taken by the state and put up for adoption.

"The conduct is the worst I have ever seen," said Buckalew as he handed down the sentence. "Why would let these things happen to these children, I don't know."

# ARMS for mu

Continued from

Sen. Daniel P. Moynihan, N.Y., a former Intelligence Committee member, attended the hearing simply. "I can't say I heard, and I don't know," he said.

Congressional hearings were present at both the House and Senate hearings as testimony was given but Casey's testimony was not.

As he was leaving the hearing, Casey was asked if the law had been violated and he said, "Of course not." Casey and his associates at the House committee are customary under oath.

Sen. Mitch McConnell, Ky., said "there is a technical violation of the law" on notifying "my counsel to the committee would be one a mistake at the time."

The day began with the House committee meeting with John Poindexter, security adviser to the President. Then the House heard from two hours. The meeting with him for two hours, and the resumed its meeting at 10:30 a.m.

In Tehran, the Ayatollah Khomeini said the controversy represented the government's victory in the war.

The judge, said Reagan University "caused" and the States was not to stop the fire from spreading. The As reported.

Senate and prohibit the publication of closed testimony members were their remarks. Several however, that would be the first on the Iran probe.

"The members shellshocked by a congressional further hearing."

Several members said they to learn from testimony that special in the knew the answers questions that they suggested indicate serious in the man's covert operations.

The administration members were said to be questions over shipping the arms to a congress.

Casey told Congress first Israeli settlement in September been authorized. Israel was listed for sent the official questioning saying.



HAPPY  
THANKSGIVING

# Anchorage Daily

VOL XLII NO 330 304 PAGES

ANCHORAGE ALASKA, THURSDAY NOVEMBER 27 1986

## Reagan orders investigation of National Security Council

By BERNARD WEINRAUB  
The New York Times

WASHINGTON — Amid the crisis over secret dealings with Iran and the Nicaraguan rebels, President Reagan appointed a three-member panel Wednesday to investigate the role of his own National Security Council.

■ **STAYING ON:** A spokesman said Secretary of State George P. Shultz does not intend to quit. A-3

■ **DENIAL:** Israel's foreign minister insists his country did not profit from the arms deal with Iran. A-9

Nonetheless, on Capitol Hill several Democratic committee chairmen in the House and the Senate made it clear that they intended to press

forward with their own inquiries on the disclosures about the affair. Some Democrats called for the resignation of Donald Regan, the White

House chief of staff

The president's action, announced shortly before he left for Thanksgiving at his ranch in California, came as the Justice Department broadened its investigation into the secret arms shipments to Iran

See Back Page. REAGAN

Co an  
By El  
The W  
W  
ing  
dealt  
regal  
resist  
trans  
in Ce  
Se  
Infor  
further

## Father gets 26 years

Judge: Sweetin's acts 'barbarous'

By SHEILA TOOMEY  
Daily News reporter

A father who committed "multiple barbarous acts" against his infant daughter has already separated himself from a normal society, a Superior Court judge concluded Wednesday. But to make the separation complete, Judge Seaborn Buckalew sentenced Jimmy Sweetin to 26 years in prison.

"He has effectively excommunicated himself from humankind," Buckalew said during a 24-hour sentencing hearing. "That's why he can't lift his head up here in the courtroom."

And indeed, Sweetin, 26, sat at the defense table with his head bowed, as he has each time he has been brought into court and forced to listen

See Back Page. SWEETIN

### weather



Increasing clouds today with north winds to 15 mph. High 10

### CHARTING HARD TIMES IN ANCHORAGE

#### RIISING UNEMPLOYMENT

9% increase 1985-86 Statewide



SOURCE: U.S. Labor Department Bureau of Labor Statistics

#### MORE FOOD STAMPS

1% increase 1985-86

Household receiving stamps

## Poverty has

This year, more folks in

By ELIZABETH PULLIAM and SHEILA TOOMEY  
Daily News reporters

A car door slams in the parking lot of a deserted shopping center. A woman, panting and disheveled, rushes into a storefront food bank. She emerges with bread and milk in a small paper sack. And, since it's a good day, there's also an onion and a fresh green pepper.

Listen. A machine blip-blips in the intensive care unit at a local hospital, broadcasting the failing heartbeat of a baby born too soon. Every blip plunges her parents deeper and deeper into debt. Their health insurance disappeared with dad's job.

Listen. A wracking cough shares the pre-dawn stillness outside the welfare office at Fourth Avenue and Gambell Street. The lineup snakes along the sidewalk, around the corner and down the alley. Budget cuts mean there are fewer case-workers and the word is out. Get there early or wait all day.

Listen. "Now is the toughest time I've ever seen," said Judy Sharpe, a social worker at Providence Hospital.

Almost 30,000 Alaskans are out



Today the gins its th Neighbor-to-h Again this t we'll be writt folks in Anch use some help you, our read share some of The help you neighbors bef help today. Ye about that r Neighbor-to-N styles, Page D-

...mental illness, the kind associated with stress, is on the way up. People are worried about being about to lose their house, their job, their insurance," said Dr. Aron Aul of the Langdon Clinic.

As snow falls on the Tullaghan Mountains and the wind rushing through the passes brings another winter to the Anchorage bow, people whose job it is to deal with the fear and the anger, the frustration and despair say things are going to get worse. Unemployment benefits are running out for workers who lost their jobs when the

People who haven't gotten sick yet will. People who made it through their last crisis thanks to a permanent fund dividend check won't get another until next winter. Those who didn't get out while the getting was good —

"I don't even think about leaving — this is my bump," says Al Horton, 25, an out-of-work meatcutter from Homer. "I'll make it through somehow." Poverty in Anchorage doesn't stare out into the street like the empty windows of a tenement. It's bundled under parkas and watch caps. It's locked behind the doors of over-

There are a lot of poor people out there," said Myrna Orme of Headstart. "But unlike the Lower 48 you don't see them. It's because they're indoors and not out on the street. But they're just as poor and they're just as sad." Listen over the next few weeks. Listen to the sound of the safety net tearing.

## SWEETIN: Judge hands down 26-year prison sentence for child abuse



Jimmy Sweetin weeps during sentencing.

Continued from Page A-1

to details of the injuries suffered by his daughter, Tina, now nearly 2.

He had pleaded no contest to charges that he, on different occasions over a period of weeks, burned Tina with the electric element from a frying pan, deliberately dropped her on her head, causing a massive skull fracture, and, in March, held her head under water in the bathtub for five minutes or more.

He broke his court silence briefly Wednesday with tears, and with a plea that Buckalew take into consideration his spotless background and exemplary service as a petty officer in the Navy.

"Nobody wants to hear that I am sorry," Sweetin told the judge. "Nobody wants to hear that I love my daughter. I have never been in trouble with the law before. I don't have a violent background... I'm very thankful right now that I have the forgiveness of God... I'm very, very sorry. I do love my daughter. That's all." Sweetin said he believes God will look after Tina.

Buckalew responded: "I think God is the only one that can cure her now. Miracles aren't performed by people on this planet."

In addition to the 26-year prison term, Buckalew effectively barred Sweetin from contact with his two children for the next 31 years without written permission from a probation officer and any agency involved in protecting the children. He also barred Sweetin from living in any "family-type situation" involving children under age 16. Tina, her baby brother Christopher and a step-brother, Leroy, are all now in foster homes.

Margaret Sweetin, Jimmy's wife, is now serving a six-month jail term for failing to get medical aid for Tina. She was not charged with abusing her children, but evidence at her sentencing last week indicated a history of child neglect dating back to before she met and married Sweetin.

District Attorney Victor Krumm had asked that Jimmy Sweetin be sentenced to 46 years for his assaults on Tina.

"He didn't do it to her on one occasion," Krumm said. "This is a man who is in the process of killing that child. It's taking him weeks to do it."

Krumm called Sweetin's description to police of the near-drowning incident chilling. Sweetin said Tina spit up on herself and he held her

under water briefly to clean her.

"While she was under, her eyes were opened, her hands were straight up and it seemed like I seen her take a gasp for air."

Sweetin said he did not hold her under water for anywhere near five minutes, but doctors said it would have taken that long to account for the damage done.

Tina's brain damage is so severe "she would have been better off if they had just finished her," Krumm said. The child is blind, probably deaf and is unlikely ever to be able to care for herself, according to medical testimony presented at an earlier hearing.

"She won't be able to do anything," Krumm said. "She's dead... She doesn't even know we're out here any more."

Buckalew agreed that the offenses Sweetin committed were among the worst possible assaults — committed against someone who couldn't fight back, against a member of his family who had a right to be safe in her own home. Both circumstances justified increasing the normal seven-year presumptive sentences for the skull fracture and the near-drowning, he said.

But, Buckalew noted, Sweetin was himself an abused child, beaten severely by a stepfather from the time he was 4 until he was placed in a group home as a teenager. Battered children often grow into batterers, he said.

"I am pretty much persuaded that if he wasn't a battered child... he probably would not be sitting here in this courtroom," the judge said.

Buckalew sentenced Sweetin to 15 years for the near drowning, 10 years for the skull fracture, five years suspended for the burning incident and one year for failing to get medical aid for his daughter, a misdemeanor. He is likely to serve about 17 years before being eligible for parole.

Defense attorney Lionel Riley urged Buckalew to consider that Sweetin was not a danger to the general public, only to children in a stressful family situation. Sweetin was driven to the breaking point by his inability to get a decent job, Riley said, and by the fact that his wife, for the first time, was bringing in more money than he was.

"Tina is a member of the public," Buckalew said. "She's as important as anyone in this courtroom."

## REAGAN: President orders investigation of NSC; Congress plans its own inquiries

...the appointment of Tower... about it Regan is sick about... tration officials.

# Judge refuses 'liar' Rodriguez new trial

By KIM RICH  
Daily News reporter

Convicted child pornographer Carlos "Chico" Rodriguez will not get a new trial, according to an Anchorage Superior Court judge who said Rodriguez is a liar.

The court does not find

Chico Rodriguez a credible witness. "The court does not believe Mr. Rodriguez," Judge Ralph Moody said in a written order handed down Tuesday.

Rodriguez had requested a new trial claiming that he received ineffective counsel

during his 1981 trial. Rodriguez, 48, was convicted of 25 felony counts, including rape, and operating a teen-age child pornography, prostitution and burglary ring.

He is currently serving an 8 1/2 year sentence in an Outside prison.

Rodriguez was back before Moody last week in an Anchorage courtroom during a hearing held to determine if he received effective counsel during his trial. Moody is the same judge who had tried and sentenced Rodriguez.

Moody also rejected Rodriguez' claim that Schapira failed to aggressively represent him because Rodriguez couldn't come up with up to \$50,000 to pay Schapira in addition to fees Schapira was receiving from the state.

Neither the existence of this fee contract or Rodriguez' failure to pay Schapira additional money affected the quality of Schapira's representation of Rodriguez. Rodriguez was satisfied with Schapira's representation until after he got convicted. He got the idea for filing this motion, after the trial from other prisoners who were filing similar motions," Moody said.

In his ruling, Moody dismissed all of Rodriguez' claims that his court appointed attorney, Mitch Schapira, failed to adequately represent him.

Specifically, Moody said there was no evidence that Schapira's ability to defend Rodriguez was impaired by prescription medication he was taking at the time for a back injury.

# Couple charged with abuse of infant who's left in coma

By KIM RICH  
Daily News reporter

An Anchorage couple was arraigned on child abuse charges Tuesday in Superior Court as their year-old daughter lay in a coma at a local hospital.

Jimmy D Sweetin, 25, and Margaret A Sweetin, 24, each entered not guilty pleas before Judge Victor Carlson.

Jimmy Sweetin is charged with four counts of first-degree assault, one count of third-degree assault and one count of criminal nonsupport.

Margaret Sweetin is named only in the criminal nonsupport charge. That charge alleges that the couple failed to get medical care for a "serious" head injury to the child.

The incidents occurred between January and March, according to court records.

Jimmy Sweetin has been jailed on \$100,000 cash-only bail. Margaret Sweetin is not in custody.

According to court records, on March 6, paramedics responded to a possible drowning at 3911 E. 7th Ave. where they found the Sweetin's infant, Tina, unconscious. The child was taken to Humana Hospital Alaska where she has remained in a coma. She is on life-support systems.

According to police, Jimmy Sweetin told police that the child had been eating when she vomited on herself. Sweetin said he took the child into the bathroom where he attempted to wash the vomit off by placing her in a bathtub partially filled with water.

Police say Sweetin told them that he held the child's head "submerged with one hand while washing the vomit off the child's body with the other hand."

Police say that doctors at the hospital also found that the child had other, older injuries, including a skull fracture, a broken collarbone, a damaged ear drum and a burn on her left wrist.

Both Sweetins are scheduled for trial in June.

# Officials want boundary settled

By SUE CROSS  
The Associated Press

JUNEAU — Alaska officials want the United States government to step up efforts to settle a dispute with the

people of the United States," said the resolution, which will be sent to President Reagan, Secretary of State George Shultz and a handful of other federal officials.

The oil companies have not is the boundary. Further complicating the dispute are \$108 million in leases for oil and gas drilling rights in the area that the United States sold in 1984.

Since 1937

# Brownie

WHITELINE

# Spring

## CLEARANCE SALE!

WHILE THEY LAST  
FIRST COME, FIRST SERVED

82 DENVER/TRAUMER WARDEN	4.99
WASHINGTON WHEAT REG. 8 95	4.99
82 DENVER/TRAUMER FELTON EMPIRE	4.99
SANTA CRUZ MT. REG. 8 95	4.99
83/81 WHITE RHEINLAND, PAUL THOMAS	4.99

esses  
be  
er  
ct

Two wit  
scribed eight  
fishing boat  
ked to point  
n Kenneth  
itting a few  
ournom

lawyers lat  
was a point  
murder trial,  
its second  
prosecutors  
ed the two  
dramatic  
fication if  
t the pair  
eel as the

orney Mary  
the witness  
n certain of  
oting a skiff  
urning fish-  
r in Septem-

d of killing  
members  
stor in Sep-  
the boat  
raig. The 25-  
of Bellingh-  
o accused of  
to destroy  
ime.

uesday were  
nd Jan Kit-  
couple who  
vessel that  
stor skill as  
m the burn-  
and Kit-

# Newcomb has violent history

By **RONNIE CHAPPELL**  
Daily News Staff Writer

Gary Frank Newcomb, 33, is a convicted killer who has eluded Alaska police dragnets three times in the past five months.

In October, he became the only man in break out of the Wildwood Correctional Facility in Kenai. He was being held in a maximum security cell at the pretrial building. He had been there ever since.

Those who know Newcomb describe him as an intelligent, ruthless, violent scoundrel who has spent most his life behind bars. He began using aliases as a juvenile. He stabbed a man to death in a fast food restaurant before coming to Alaska. He shot a bystander in the chest following a traffic incident.

He may be responsible for the 1982 disappearance of a Soldotna man, according to

See Back Page, **NEWCOMB**

# THE ELUSIVE TRAIL OF GARY NEWCOMB



**OCT. 1:** Saws his way out of the Wildwood Correction Facility in Kenai, the only person to ever escape.

**OCTOBER:** Troopers are tipped that Newcomb will try to leave the Kenai Peninsula in costume after a party. Officers staking out the party say Newcomb never shows.

**NOVEMBER:** Troopers are told that Newcomb is holed up somewhere in a group of cabins in North Kenai. Twenty-four troopers arrive at a cabin-by-cabin search finding gear covered by Newcomb's fingerprints. Trooper suspect gone.

**DECEMBER:** Troopers are holed up somewhere in a group of cabins in North Kenai. Twenty-four troopers arrive at a cabin-by-cabin search finding gear covered by Newcomb's fingerprints. Trooper suspect gone.

**JANUARY:** Troopers are holed up somewhere in a group of cabins in North Kenai. Twenty-four troopers arrive at a cabin-by-cabin search finding gear covered by Newcomb's fingerprints. Trooper suspect gone.

**FEBRUARY:** Troopers are holed up somewhere in a group of cabins in North Kenai. Twenty-four troopers arrive at a cabin-by-cabin search finding gear covered by Newcomb's fingerprints. Trooper suspect gone.

**MARCH:** Troopers are holed up somewhere in a group of cabins in North Kenai. Twenty-four troopers arrive at a cabin-by-cabin search finding gear covered by Newcomb's fingerprints. Trooper suspect gone.

**March 3:** Acting on a tip, two Anchorage Police Department officers confront Newcomb in a Mountain View barber shop. He manages to grab an officer's gun, shoot both officers and flee. Saver-

# Barber spotted escapee in chair

By **DAVID POSTMAN**  
Daily News Staff Writer

Magir Jackson said he was looking forward to cutting the customer's hair because the man said he was getting married and I was looking forward to doing him. It was good.

But Jackson, a student at Anchorage Barbers College, said he thought something was wrong when his instructor told him to give the man a shampoo he hadn't asked for.

"I took him over to the sink. I saw the police officers coming in and then the other instructor said, 'No, why don't we do it dry cut.' Jackson said.

What Jackson couldn't see, but other barbers and customers could, were two Anchorage Police officers with guns drawn coming in the front and back doors. Jackson said later that one of his fellow students had recognized

See Back Page, **BARBER**

# BARBER: Recognized escapee

Continued from Page A-1

ing the fight "I heard, 'Pow! Pow!' and there was a pause and then 'Pow!' again," Jackson said. "There was a lot of hollering and then things got quiet."

Both officers had been shot and could do nothing when the gunman turned and ran toward the back door.

"I heard the shots, and saw this guy running toward me. At the door, he stopped, turned around, squatted and shot again for good measure," said Ron Farley, who was getting his hair cut in the back of the shop. He said the final shot seemed to go into the ceiling.

Officer Francis Patrick O'Brien, slumped in a chair, trying to stop the bleeding from his left shoulder. Officer Preston "Jack" Chapman, who was shot in the neck, lay on the floor and seemed to fall in and out of consciousness.

Customers and barbers there weren't much we could do," Farley said.

At least one bullet was found in the Family Restaurant next door. Nick Nelson said he was drinking coffee when the bullet came screaming through the wall above his head. "It got plaster in my coffee," he said.

# NEWCOMB: Captured convict has history of violence, elusive ways

Continued from Page A-1

were dead ends, but then a Clechanski Road resident reported that Newcomb had come to his house to borrow an automobile jack. Troopers found Newcomb trying to pry a red Volkswagen out of the mud at Castaway Cove, a recreational subdivision on the banks of the Kenai River.

Two troopers closed to within 50 yards, and ordered Newcomb to stand up and move away from the vehicle. Instead, Newcomb moved behind the car, kicked off his rubber cannyer boots and fled across a narrow footbridge onto a small, heavily wooded island.

The troopers pursued Newcomb until they lost sight of him. Then they stopped and waited for assistance. During the five-hour search that ensued, Newcomb eluded a police dog, a helicopter and a dozen policemen.

A month later, police got another chance when they learned that Newcomb was holed up in a remote cabin in North Kenai. Twenty-four troopers, assisted by a helicopter, came up empty-handed. They did find camping equipment and an off-road vehicle with Newcomb's fingerprints.

ger prints all over it. That was the last police saw of Newcomb until he surfaced Tuesday in an Anchorage barber's chair.

Newcomb's criminal record is checkered with violent crimes.

In 1974, he was convicted of manslaughter after he and George Bretzner — who would team with him nine years later in Sterling for robbery — killed a man during a knife fight in a Jack-in-the-Box restaurant.

When released from prison, he was involved in a traffic incident that escalated into bloodshed. Newcomb, a motorcyclist, claimed that a motorist had tried to sideswipe him. When the car finally stopped, Newcomb irked in the window, climbed inside and beat up the driver. He then drove the car to a remote location where he committed the assault.

A passerby answered the driver's call for help. When Newcomb beat the second man, the first fled. Newcomb pursued him, but was unable to catch him. He then returned to the car and shot the second man — who was serious but unable to move.

In the chest.

Newcomb fled to Alaska, where he was involved in what may be the biggest robbery in Alaska history. It occurred the night of Feb. 10, 1983 when Newcomb and two other armed men broke into the home of Sterling fur dealer Ed Whittaker. Newcomb and his accomplices made off with pelts, raw furs, coats and other finished goods valued at \$350,000.

A Kenai jury was unable to decide if Newcomb was guilty or innocent the first time he was tried. The second time, he fired his attorney and represented himself. The second jury found Newcomb guilty of armed robbery.

Before the trial, co-defendant Bretzner reneged on a deal requiring him to testify against his longtime friend.

Fear that Newcomb would harm his wife and child probably prompted Bretzner's decision to refuse to testify, a source close to the case said.

Those who did testify said they were afraid of Newcomb because they believed him responsible for the 1982 disappearance of a Soldotna man known to them as "Joe Wil-

the man as escaped convict Gary Newcomb and called police. But, at the time, Jackson didn't know who's hair he had been cutting.

The policemen put their guns away as they approached Jackson's customer. They stood on either side of the man with shoulder-length, sandy blond hair, blue jeans and a red plaid shirt and said they needed to ask him a few questions. The man didn't seem concerned, Jackson said.

But when the officers tried to search the man, pulling up his shirt and reaching around his back, he jumped out of the chair and began fighting with them.

"They pulled him out of the chair and told him to go along with them and he wasn't about to," said Norman Rollness, who was waiting for a haircut at a few chairs down.

As they fought, a nest of 25 or so people in the barber shop dove for cover, some running out of the building.

"They were trying to get on the floor. I was trying to get out the way and I heard three shots," Jackson said. Witnesses said the man took one of the officers' revolvers dar-

# OFFICERS STIOL, COLLIVILL CAPTURE

## Police capture long-sought fugitive after tense five-hour standoff

By RICHARD MAUER  
Daily News reporter

The law caught up with escaped convict Gary Newcomb Tuesday night, but not before he stole a policeman's service revolver and shot the officer and his partner inside a crowded barber school in Mountain View Tuesday afternoon. Newcomb fled from there into a neighborhood of apartment houses and duplexes and for five hours eluded a huge force of officers cordoning off the neighborhood. He was finally captured in an alley at 10:10 p.m.

The two wounded officers were reported in stable condition at Humana Hospital-Alaska. Officer Preston "Jack" Chapman, 38, was shot once in the neck and once in the buttocks. He was critical but stable after undergoing surgery for an hour to remove the slug from his neck.

Officer Francis Patrick O'Brien, 42, was shot in the shoulder and was reported in stable condition. Police spokesman Joe Young said that the bullet that struck Chapman missed all his vital organs.

Newcomb's last hours of freedom were spent hiding in a apartment while a police tactical weapons squad surrounded and then attacked the house next door at 340 Price St., which is where a witness thought Newcomb was. After a tense standoff, the officers fired tear gas and concussion grenades into the house and searched it, only to come up

empty. It was not until police began an apartment-by-apartment search of the area that Newcomb leaped from the window of his hideout and ran into an alley. He was captured just north of Peterkin Avenue.

His arrest ended a five-hour blockade of a large section of Mountain View. Patrolmen with copies of Newcomb's mug shot blocked off every major intersection leading out of Mountain View and searched every vehicle that left, settling off huge traffic jams in the waning minutes of the afternoon rush hour and on into the frigid night. Many motorists traveling on the Glenn Highway, Mountain View-Drive and Bragaw Street were directed to open the trunks of their cars.

No one, including residents, was being

See Back Page, CAUGHT



Anchorage police officers hold Gary Newcomb after his capture on Price Street late Tuesday night.

## CAUGHT: Convict nabbed after shooting two officers

Continued from Page A-1

allowed into the area into which the suspect melted.

From the start, police were convinced that their suspect was master escape artist Newcomb, 33, who has successfully eluded police through a series of close calls with authorities since he escaped from Wildwood Correctional Facility in Kenai in October. He had killed a man in California and was under sentence for evasions of kidnapping, attempted murder and robbery.

The day's dramatic events began unfolding around 5 p.m. when a man with shoulder-length, sandy blond hair, blue jeans and a plaid shirt walked in to Anchorage Barber College at 3519 Mountain View Drive. The man said he was getting married and asked for haircut.

One of the student barbers, believed by his fellow students to have once been a corrections officer, looked at the customer and made the connection it was Gary Newcomb.

Police were called at 5:05

p.m. One of the instructors tried to distract his most-wanted customer with the full treatment until they arrived. While Newcomb was being led to the shampooing sink, officers Chapman and O'Brien, guns drawn, popped in through the doors, one from the front, the other from the back.

According to witnesses at the school, the officers put their guns away, then stood on either side of Newcomb, who by this time was seated in a chair, and said they wanted to ask him some questions. When they tried to search him, Newcomb leaped from the chair, wrestled with the officers, and grabbed the service revolver from one of the officers. He fired at least three shots and ran out the back door.

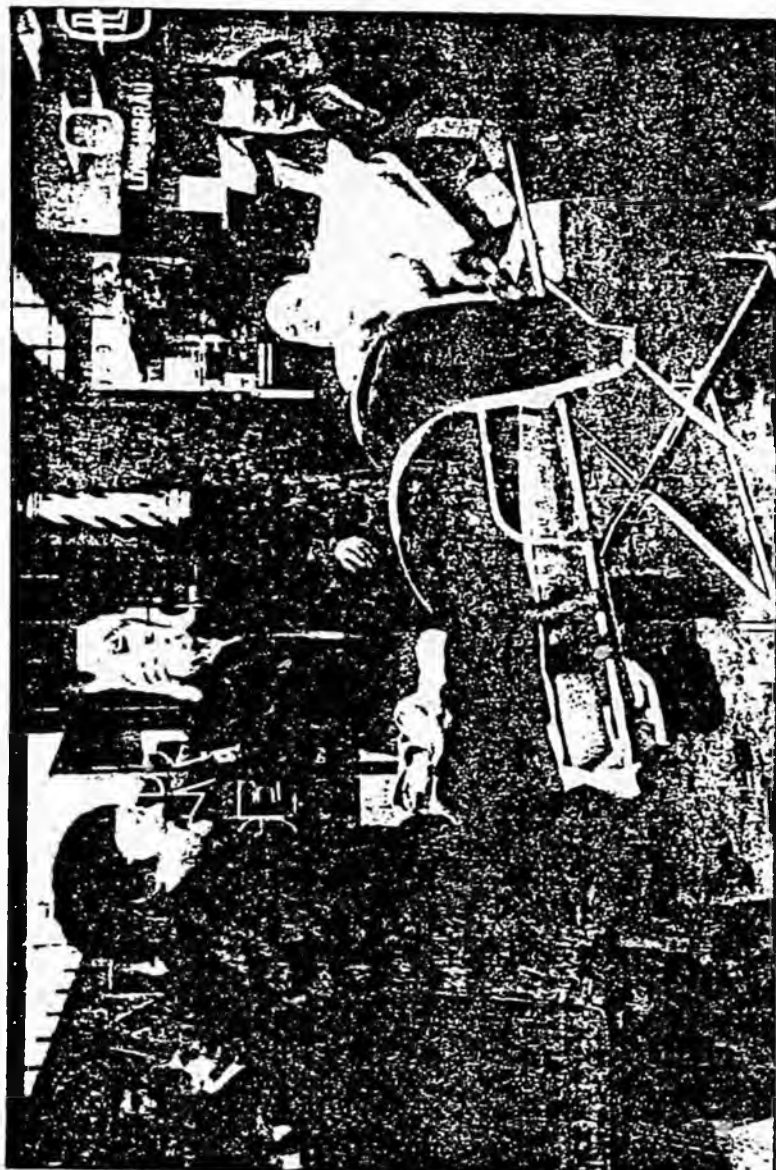
The barber shop had been crowded with customers, including children, but it emptied quickly. One witness said that the gunman stopped at the rear door just before leaving, turned, and fired once more into the shop.

"One bullet pierced the wall of the Family Restaurant next door. A customer said it left a trail of plaster in his coffee."

Within moments of getting the call that two officers were down, squad cars raced to the area and roadblocks were set up. Motorists, on their way home from work were greeted at busy intersections by officers totting shotguns and drawn revolvers. Other policemen fanned out through the neighborhood north of the barber school, and dogs were called in to sniff out the suspect.

Anchorage police said it was one of their biggest man-hunts ever, with 75 to 100 officers participating.

Neighbors, alerted to the troubles outside their doors, called in reports or signaled to officers with sightings. Newcomb was tracked down to apartment 3B at 340 Price St. According to one neighbor, Newcomb had been liv-



Paramedics take police Officer Francis P. O'Brien to the hospital. O'Brien was shot in the shoulder Tuesday.

ing in the apartment in the million and brown single-story duplex for about three weeks.

Police surrounded the building around 6 p.m., taking vantage points from the apartment house next door and from an abandoned building across the alley at 331 Mumford St.

But while all that was going on, in the streets, JJ neighbors, including children, were nonchalant about the danger in the midst. A few strolled the sidewalks as if nothing was going on, while a young boy played by the window of an apartment kitly-corner to the one under guard.

People coming home from work or shopping walked along Mumford Street as police with shotguns ducked up alleys, closing in on Newcomb's residence.

It is a poor night hood, been

holed up in Apt 12A in 330 N Price St next door.

About 10 p.m. after searching one apartment and the laundry room of 330 CRTI officers said they saw movement in the apartment. Seconds later, a back window was broken and Newcomb was out.

He ran through an alley and tried to skirt in front of Price Street, said Officer Ron Wade, but changed his mind when a trooper helicopter illuminated his movements.

"I think he saw the lights, and he cut back between the buildings," said Officer Ron Wade.

Newcomb ran for cover between the buildings, and slipped underneath an orange van parked in front of 330 N Price.

Wade, a Restwiler track-

ing dog fan to the van and

began to attack. K-9 officer Kelley Schuck pulled the dog back and ran with him to the van's other side.

Newcomb was starting to slide out, with a weapon drawn, Wade said. The dog attacked again, however, the gun from his hand and Schuck made the arrest.

No shots were fired and there was no fight, Wade said. Newcomb was hustled to a cruiser, handcuffed and surrounded by police. He had a bloody lip and there appeared to be blood coming from his right ear.

Daily News reporters Hal Bertson, Ronnie Chappell, Pat Epler, Jim Erickson, Nancy Montgometry, David Postman and Hal Spencer also contributed to this story.

# Prosecution: Hatred fueled murder

## Mackay defense argument scheduled next; case could go to jury Friday

BY SHEILA TOOMEY

Daily News reporter

**FAIRBANKS** — Neil Mackay's hatred for Robert Pfeil consumed his life and spilled over into the life of his son, robbing the boy of love, attention and even space, prosecutor Peter Gruenstein told jurors Wednesday at Mackay's murder trial.

"There was one long, dark shadow over Bob Pfeil's otherwise sunshine-filled life," said Gruenstein. "Robert Pfeil had but one mortal enemy in the world and he sits before you, awaiting the justice he deserves."

Gruenstein took slightly more than three hours to summarize the state's case against Mackay, 63, a former Anchorage lawyer and businessman. Mackay is accused of paying strip club manager Gilbert Pauole \$10,000 to arrange Pfeil's death. Mackay was once married to Pfeil's sister and the two men were long-time enemies.

The defense will give its closing arguments today, with prosecution rebuttal scheduled for Friday, when the jury should get the case.

The evidence against Mackay is

straightforward, Gruenstein said, much of it coming from Mackay's own mouth. He urged jurors to listen carefully to a taped telephone conversation between Mackay and Pauole, made under police supervision just hours after Pauole was arrested on Nov. 8, 1985.

Pauole told Mackay police were closing in and asked for getaway money. "Imagine what the reaction of an innocent man would be," said Gruenstein. "Confusion, outrage, anger."

"Mr. Mackay's first reaction is, 'Well, where are you calling from?'"

"There are a hundred reactions that would be plausible and consistent with an innocent person," said Gruenstein. But not Mackay's response: "Don't say too much, you know. You're going to implicate yourself."

This tape, all by itself, is enough to erase any reasonable doubt about Mackay's guilt, he told jurors.

Gruenstein also pointed to a sheet of addresses relating to Bob Pfeil that was typed in Mackay's typewriter and found in Mackay's Seattle home, to the testimony of a jailhouse snitch who

said Mackay made incriminating statements to him, and to a phone call from Pauole's Anchorage home to Mackay's Honolulu apartment at 9:08 p.m. the night Pfeil was shot.

Pauole said he called Mackay and reported that the job was done. But, during the trial, Scotty Mackay, Neil's 14-year-old son, testified that he, not his dad, answered the phone that night and no one was on the line.

"Scotty's story is incredible," Gruenstein said. The boy was able to "remember the time and the date even though he wasn't asked about it for 15 months... until January of this year."

Consider the likelihood that a young boy could do this, Gruenstein told jurors. "then ask yourself why the defense would present such evidence."

"So much of this case can be understood through Scotty because, as you know, in a very real sense, that's where it all began."

By "it," Gruenstein meant the alibi murder motive — Mackay's long abiding fear and hatred of Bob Pfeil and the rest of the Pfeil family. Using

See Page D-3, MACKAY

## MACKAY: Trial nears end

Continued from Page D-1

a huge "hatred/fear/frustration" chart, Gruenstein traced the history of the Pfeil-Mackay feud, beginning in the late 1960s with Bob Pfeil's opposition to the marriage of Mackay and Pfeil's sister Muriel.

Animosity flamed in 1976, when Muriel died in a still unsolved car bombing and it burned brightly during years of court fights over Scotty and the management of Muriel's estate.

Mackay was obsessed, Gruenstein said, and the obsession got worse over the years, not better. He feared Pfeil would kidnap Scotty. He feared Pfeil would poison Scotty's mind against him with suspicions about who was responsible for Muriel Pfeil's death. Bob Pfeil believed Mackay was.

Mackay hated the fact that Pfeil controlled Scotty's inheritance and would one day be an influential person in Scotty's life because of it, said Gruenstein.

"It gnawed on him and gnawed on him."

Papers from 10 years of legal battles over all these fears littered every surface in the apartment Mackay and Scotty shared. Although the son of a millionaire, Scotty had no bed of his own because Mackay turned the boy's bedroom into an office, Gruenstein said. Scotty had nowhere to eat dinner, because Mackay's legal papers covered the dining room table.

Instead, Scotty "has to clear a corner of the coffee table in the living room to eat the food a neighbor has brought," he said.

Because of his father's obsession, Scotty "doesn't know whether his own grandmother is alive. . . . It's a heart-rending image when you stop to think about it."

"The motive in this case is as powerful as evidence can ever be," Gruenstein said.

Anticipating a direct attack by the defense on the credibility of the state's main witness, Pauole, Gruenstein said Pauole was no friend to the state.

No one's asking jurors to believe Pauole "because he is



Fairbanks Daily News-Miner/Charles Mason  
**Peter Gruenstein**



a fine human being," he said. Pauole came into court a confessed murderer. He should be believed because other evidence corroborates his story.

He dismissed defense suggestions that Pauole fingered Mackay in order to get a deal — 20 years maximum in prison. Pauole would have gotten the same deal no matter who he named as the principal in the conspiracy, as long as he had proof he was telling the truth, such as the phone tapes.

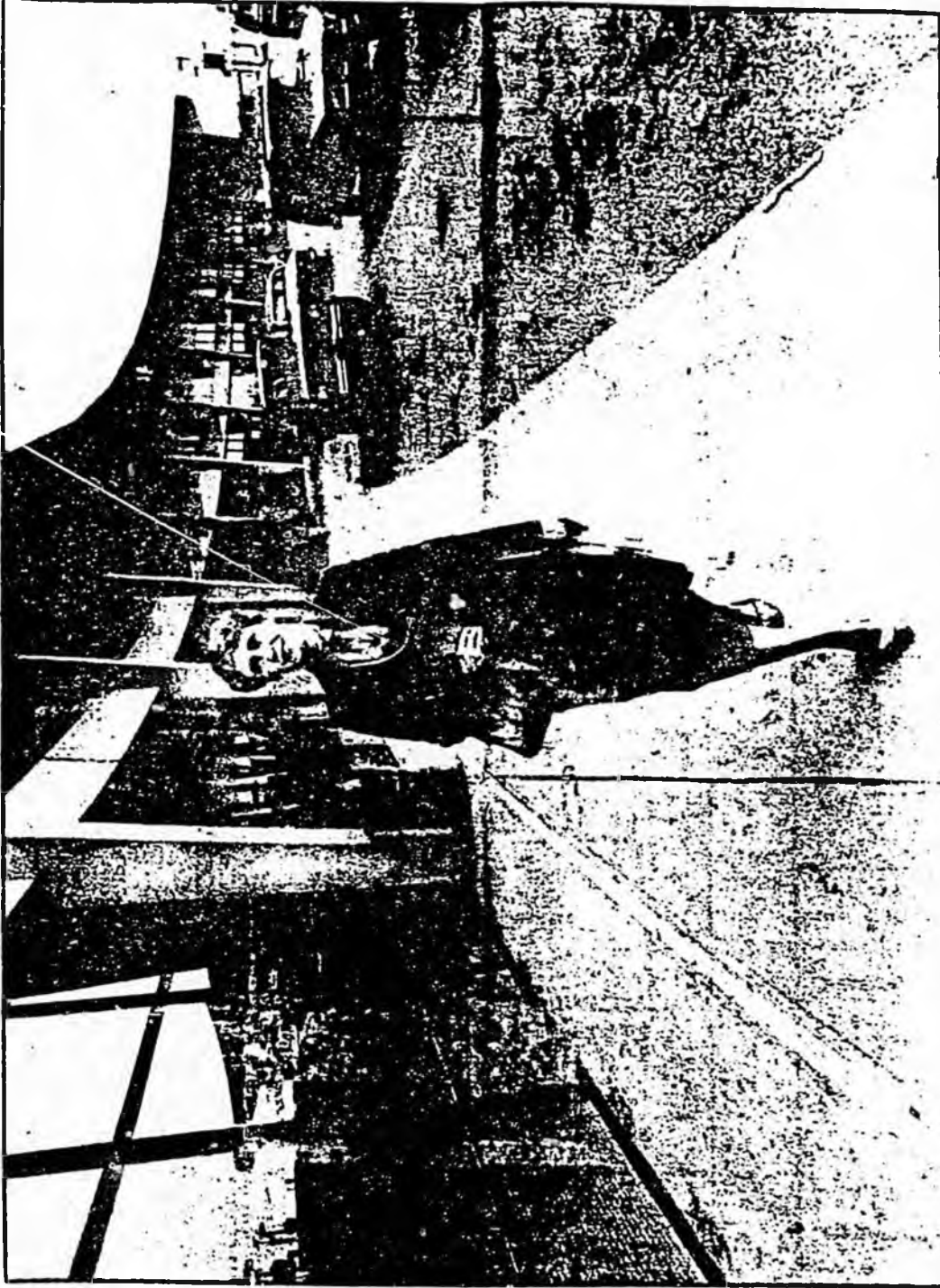
"The State of Alaska entered into an agreement with Junior Pauole because it had to," said Gruenstein. "Neil Mackay associated with Junior Pauole because he wanted to, because he chose to."

When the defense starts pounding on Pauole in their closing, said Gruenstein, jurors should remind themselves that Pauole was Mackay's friend, associate, tenant, a man Mackay sent his son's report card to.

The defense is trying to put Pauole on trial in place of their client, Gruenstein said. "Neil Mackay is the issue in this trial and all the evidence points in one direction. It points to Neil Mackay."

Anchorage Daily News 4/17/87

# MARIANNE PFEIL: FACING HER FAMILY'S PAST



Anchorage Daily News/Erik Hill  
Marianne Pfeil walks from the Anchorage airport terminal after returning from a day at the trial of Neil Mackey in Fairbanks.

# Widow says she must see it through

By SHEILA TOOMEY  
Daily News reporter

**F**AIRBANKS — Most mornings Marianne Pfeil leaves her home by 6:30 and drives to Anchorage International Airport, where she boards an Alaska Airlines flight for one more trip into the past.

Flight #89 takes her to Fairbanks, where her former brother-in-law is on trial, charged with murdering her husband. "This is my life on stage up there, my family. I have to finish it."

In Courtroom D, on the second floor of the state courthouse, she takes a seat in the darkened spectator section and settles down for another day of The State of Alaska vs. Neil Mackay.

Mackay is accused of paying an Anchorage nightclub owner \$10,000 to have her husband, Robert Pfeil, killed. Pfeil was shot by a gunman on Oct. 12, 1985 and died a month later.

Despite talk of gangsters and drug dealers, of strip joints and snitches, which has dominated large parts of the testimony so far, this trial is essentially a family affair.

In addition to the murder charged, Mackay is suspected by some, including Marianne, of arranging the death in 1976 of his ex-wife, Muriel Pfeil Mackay, Robert's sister. Both sides say the two killings are linked, so there has been testimony about Muriel's death, about her nasty divorce from Neil in

1975, about the bitter battle after he death over custody of her son, Scotty.

Bob and Muriel's mother has testified. She's 87 now. Mackay's sister has taken the stand. They became estranged during the custody fight. Scotty, now 14, has testified; the woman now reportedly taking care of him is Mackay's first wife, Barbara Homay.

It's a family affair. Marianne Pfeil sits and listens, five hours a day, to her family's bloody linen being washed in public. She says she cannot stay away. She says she can't step forward into her future until the past is done.

"There was one day I felt like

See Back Page, **MARIANNE**

# MARIANNE PFEIL: She takes a daily flight to the trial so she can put the past to rest

Continued from Page A-1

screaming. . . . There was a day when they talked about me. I thought, 'If they don't stop, I'm going to scream.'"

Using a pass given to her by Alaska Airlines, her husband's employer for nearly 30 years, Pfeil commutes to Fairbanks each day the trial is in session. She hasn't missed a day since opening statements began, on Feb. 10.

"Yes, I'm tired," she admits. "It's getting to me a little bit, the immenseness of it all. And springtime, I think, being alone in springtime. It just hits you all of a sudden. . . . This is going to be over and I'm going to be alone for the rest of my life."

Most days Pfeil sits on a front row bench no more than 10 feet behind Mackay. They never speak, but she studies him during the long hours of repetitious questioning and mind-numbing legal arguments. She can describe his nervous mannerisms and tries to figure out what he's reading or writing.

"He smiled at me once," she said. "I wondered why."

She did not smile back.

The people who carried out the killing of her husband have all been tried and convicted. But this trial is different, said Pfeil. "This is the only one that matters to me. The others, they never wanted to hurt me. . . . This is the one."

It's some ways Mackay's trial, with all its unhappy memories, is easier than the ones that went before. Then she was hearing for the first time how killers stalked her family, watched her home, how her husband died.

"I'm not shocked any more," she said. "Last spring was worse."

Last spring, at the trial of Larry Gentry, Pfeil rarely spoke. She sat alone most of the time and sometimes reacted emotionally to what she heard. But another year has passed and mourning is not a natural state for her. Her ebullient personality is reasserting itself.

Now she asks questions and expresses definite opinions about the witnesses and what they say. She is a woman of firmness; and other spectators in and outside the courtroom. She brings extra copies of the morning paper up from Anchorage each day and shares candy bars. Once she baked Swedish almond tarts for the prosecutors and the people who sit nearby.

Right behind Pfeil, in the second row of seats, sits Norma Gentry, mother of Larry Gentry, who is now serving 25 years in prison for helping to plan Bob Pfeil's death. Mrs. Gentry is also in the courtroom every day.



A wedding day photo Marianne Pfeil carries in her purse: From left are Robert Pfeil, Marianne, Muriel Pfeil Mackay and Neil Mackay, and Muriel C. Pfeil.

Norma Gentry has moved to Fairbanks temporarily so she can attend the trial and listen for something that might help her son. She takes notes for his appeal.

At Larry Gentry's trial in Anchorage last year, Marianne and Norma kept their distance from each other, sitting across the aisle in a much larger courtroom, each wrapped in her own grief. But it's hard to get very far away from anyone in Courtroom D, so Norma and Marianne have struck up a friendly relationship. Both 53 years old and bereft of someone they love, the two women have accepted that neither is responsible for what happened.

"I understand why she's here," said Pfeil. "I can see her plight. . . . I don't have any bad feelings toward her. She's a nice, friendly lady. I'm sure she tried the best she could. Don't you know how kids go out and find drugs? If can

happen to anyone. I feel sorry."

Norma Gentry believes her son was wrongfully convicted, so the two women avoid the subject when talking to each other.

Pfeil is Swedish and speaks with a Swedish accent. She is an attractive woman who is always well-coiffed and dressed in expensive clothes that she insists she buys on sale. She was a stewardess for SAS when she married Bob Pfeil, about six weeks after they met.

Pfeil looks a little sheepish admitting this:

"We didn't know each other very much," she said, "but I knew right away he was the one I wanted to marry. I always said that he bought a pig in a sack but . . . our marriage got better and better."

She carries a snapshot in her purse; it was taken outside the church the day she and Bob got married. In the picture Marianne hugs Bob's arm while he grins. Next to the happy couple stand the best man and the maid of honor, Neil Mackay and Muriel Pfeil. Grandma's there, too. Marianne takes the picture out once in a while and shows it to people.

The daily schedule is killing, but it's not the airplane commute that's tiring, just the length of the day.

"I used to make two, three trips a day like this when I was flying to Paris and London. I'm not more tired because I'm flying." The flight takes less than an hour.

In Fairbanks, the trial usually recesses by 1:30. Pfeil catches a 4 p.m. flight back to Anchorage. It gets in at about 5 and she goes directly from the airport to a two-hour aerobics class at the Captain Cook.

"That helps me. . . . After that class, I feel refreshed. . . . Then I sit in the Jacuzzi and listen to lawyers talk."

She is home by 8:30 p.m. and should be in bed by 11 but rarely makes it. It's hard to go to bed that early, she says, especially in the springtime.

Pfeil says she is not bitter and that seems to be true. But sitting through the trial every day is more than just an existential exercise, or a way to mourn or an effort to postpone the future. Pfeil believes Mackay is guilty and she wants to see him convicted.

"Of course it matters what the verdict is," she said in answer to a question. . . . We can maybe see Scotty again. Wouldn't that be nice? Grandma, she says, 'I just hope I can see Scotty once before I die.'"

Yes, the verdict matters.

"However it goes," said Pfeil, "it will be easier for her to accept 'if I see how the system works. . . . how hard the prosecution works."

"No," she says, "I couldn't possibly stay away."

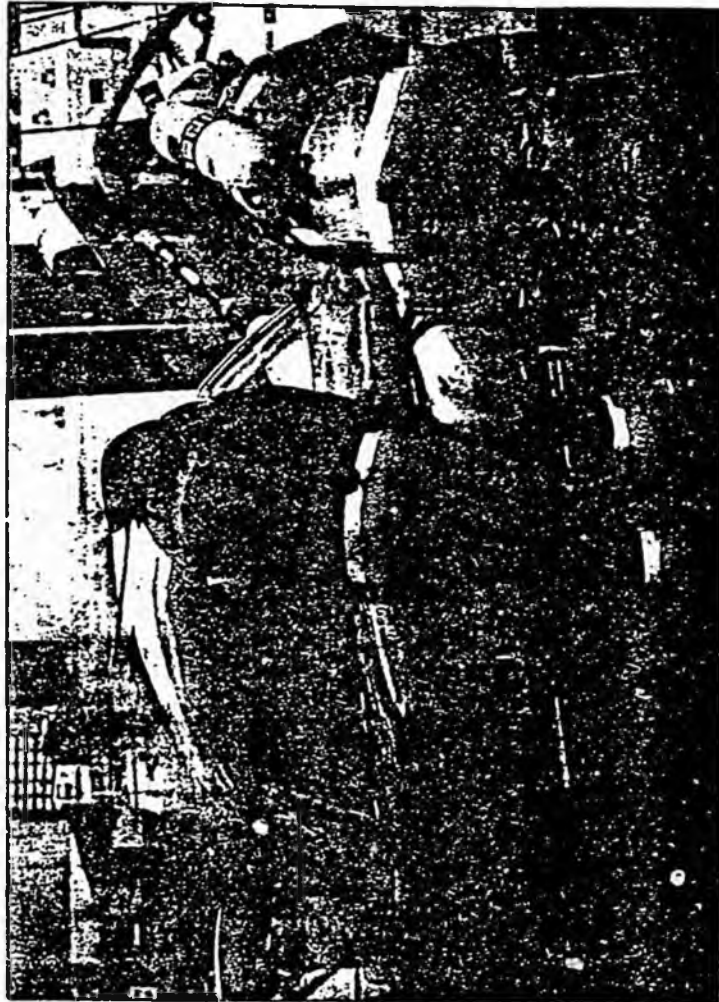
# Anchorage Daily News

PAGES

ANCHORAGE, ALASKA, TUESDAY, MAY 20, 1988

PRICE 25 CENTS

## Salvage yard explosion hurts 2



Anchorage Daily News/Eni Hill

Anchorage firefighters hose down automobile after the explosion.

### Officials suspect bomb rigged to car's ignition

By LARRY CAMPBELL  
Daily News reporter

An auto salvage yard owner and one of his employees were severely injured Monday afternoon when an explosion ripped through the owner's car parked outside his midtown business.

Anchorage police said Andy Twogood, 42, was undergoing surgery and was listed in critical condition Monday night at Providence Hospital. Fred Newbauer, 38, was listed in serious condition at Providence.

Police, city fire department arson investigators and the federal Bureau of Alcohol, Tobacco and Firearms suspect a bomb — rigged to detonate through the ignition switch — may have been planted in the car. Authorities have not ruled out the possibility that the blast also could have been caused by fumes leaking from a gasoline can found later inside the burned car.

The explosion occurred about 1:45 p.m. in front of ABC Auto Recycling, 5705 Old Seward Highway. The car was parked straddling the sidewalk next to the highway's northbound lanes and had been there for perhaps two hours, said a salvage yard employee.

The blast created a fire that quickly

See Back Page, B1A8T

es

near  
tion

d 1984  
against  
job in-  
us and  
of the  
and the  
ild be  
officer  
mend-  
is and  
harged  
units of  
each  
in jail  
Eagle  
forced  
il pen-  
n Nov.  
nt for  
e their  
31 con-  
tantly  
\$2,000

FLIER

# BLAST: Automobile explosion at Anchorage salvage yard injures 2 men

Continued from Page A-1

engulfed Twogood's 1973 Oldsmobile station wagon, blew open its engine hood and punched outward the car's roof over the driver's seat.

Police closed the highway between Tudor and Dowling roads for about six hours. They cordoned off the area about 50 yards north and south of the blast, where shards of glass were scattered.

Police on Monday began questioning employees and business associates, searching for a motive in the suspected bombing.

ABC employee Warren Troxel said Twogood and Newbauer were supposed to be going to pick up parts for one of the company's forklifts. Investigators believe the explosion was sparked when Twogood turned his ignition key.

Gil Vandemark was working at Alaska Fastener and Tool Supply directly across the street when the blast went off.

"It sounded like a 747 landing on the building," Vandemark said. "It shook the building hard."

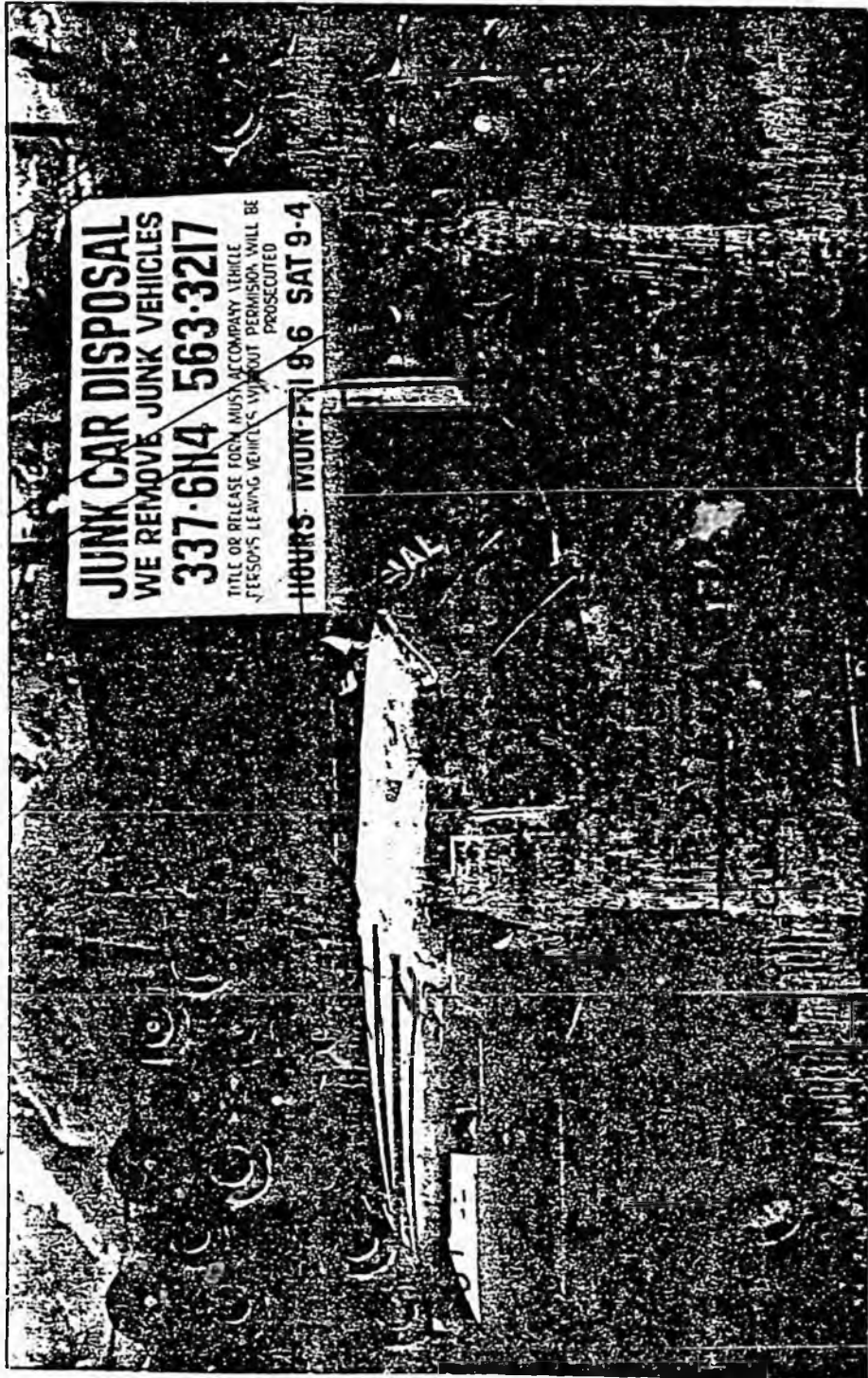
Terry Akins and Darin Allen said they saw the explosion while driving by.

"I saw him (Twogood) open the driver's door and it just exploded," Akins said.

"The blast just came straight out — Boom!" Allen said.

Another witness, Rex Feil, was sitting at his desk at National Supply Company, also across the street.

"The one guy (Newbauer) half-jumped and was half-thrown out of the passenger's side," Feil said. "And I remember this white smoke when it exploded. It threw the windshield way down the street, and shattered glass hit windows all the way over here."



Anchorage Daily News/Erin Ha

Larry Arend, Anchorage Police Department homicide investigator, looks over the remains of car after explosion.

Immediately after the blast, the critically injured Twogood was on his hands and knees trying to crawl away from the flaming wreckage, said Jerry Kenmitz who was near the salvage yard's office.

"He came to about here and just collapsed," Kenmitz said, pointing to a spot in the dirt about 10 yards from the car. "His face was already white. He looked like he'd been the worst of it."

Witnesses said Newbauer, who had been sitting in the car's front passenger seat, emerged with his left arm seriously slashed and bleeding.

"Fred came in here and we had a hard time ever getting him to sit down," Troxel said.

"He just kept saying, 'They ain't gonna cut my damn arm off!'"

The police bomb squad examined the charred car with a robot first to ensure there was nothing left to blow up before lifting for evidence by hand.

Twogood is now in Anchorage, having built his career in auto salvage in Fairbanks. He

still owns a car rental business in Fairbanks.

He bought the ABC salvage yard April 15 from former owners, Rod and Sheila Lewis. The Lewises still own a towing business in South Anchorage.

"I think he came down here because things are a little tight in Fairbanks, and he

is a good opportunity to expand," Sheila Lewis said Monday.

For the past six months, he has leased his Fairbanks salvage yard business to new operators. Fairbanks police last Friday served search warrants on his tenants and found remains of recently stolen vehicles, apparently stripped for parts.

## Explosion victim still in critical condition

By LARRY CAMPBELL  
Daily News reporter

An Anchorage auto salvage dealer remained in critical condition Tuesday from injuries suffered when his car exploded outside his business Monday afternoon.

Andy Twogood, 42, owner of ABC Auto Recycling, 5705 Old Seward Highway, suffered massive burns and internal injuries when what authorities believe was an explosive device ripped through his 1973 Oldsmobile station wagon, parked outside his salvage yard.

Also injured in the explosion was Fred Newbauer, 38. Newbauer was sitting in the passenger seat of the car and suffered burns and extensive injuries to his left arm. He was reported in fair condition Tuesday at Providence Hospital.

The blast at about 1:45 p.m. shook brick buildings across the street and blew shards of glass, including the car's entire windshield 50 to 60 yards in all directions.

Anchorage Fire Department arson investigators, police and federal Alcohol, Tobacco and Firearms investigators were still looking for answers to the apparent intentional bombing Tuesday. Part of the search included short interviews with the victims.

"We got a little bit more from them today," arson investigator Pat Patterson said Tuesday. "It's especially hard for Twogood. He has to answer with head movements, hand movements, and hand writing."

"Right now, we're still looking for the how and the why."

Twogood is a former Fairbanks auto salvage yard owner who bought the ABC yard last month.

Anchorage authorities are still looking for additional witnesses, and are asking anyone with information to call police of the Arson Hotline, 522-3473.

## Pathologist testifies at trial

The Associated Press

JUNEAU — An Oregon pathologist told a jury Wednesday that a woman accused of failing to get medical help for her dying son should have known something was seriously wrong with the child before his death.

Natalie Iris Pinkerton, 22, is charged with criminally negligent homicide in the death of her 20-month-old son, Richard A. Johnson. The boy died Easter Sunday 1986 after being hit.

Dr. William Brady, who performed an autopsy on the child, told the jury the injury that killed the boy is common in cases of child abuse. Peter Paulo, Pinkerton's live-in boyfriend, has pleaded no contest to a charge of criminally negligent homicide in the death.

Prosecutor Rick Svobodny has claimed Paulo hit the child in the abdomen hard enough to drive his intestine into the spine. The intestine

ruptured, causing a massive infection and the child's death, he said.

"A 20-month-old child would have been crying and wailing quite obviously" from the extreme pain caused by the developing internal infection, Brady said.

In addition, Brady said the youngster probably went into shock and became unconscious. The doctor said somebody who knew the child would be able to tell the difference between unconsciousness and sleep.

Brady told the jury the boy's life could have been saved had he been brought to a doctor earlier.

Prosecutors claim Paulo struck the boy while Pinkerton was out of the home at garage sales.

Brady described old bruises on the child's head. Svobodny during several court hearings has charged that Pinkerton lied about injuries Paulo inflicted on the child.

Anchorage Daily News 4/13/88

# Burned boy wants dad kept in prison

## 'Write this down: I don't want him getting out, because I'm afraid he'll hurt me ...'

By NANCY WRIDE  
Los Angeles Times

FULLERTON, Calif. — David Rothenberg is bound for "the Pipeline," an acre of concrete craters where hordes of teen-age boys flock every day to ride, "tube" and "shred" the walls on skateboards. The most famous burn victim in America and his driver are temporarily lost on a freeway.

"Oh, I think we passed it," David mutters in that aren't-adults-dumb-sometimes tone that 11-year-olds have.

During a detour for directions at a convenience store, the sixth-grader creates a stir of double-takes as he buys a soda, a scene that, by now, he shrugs off. The only skateboard park in California, however, is another matter.

It's like being the new kid on the block all over again at this mecca of male bonding and competition, in Upland, Calif., 20 miles north-east of Fullerton. With his scarred arms, legs and face and special leather protective gear, he stands out from the bare-chested, sweating boys hot-dogging on the face of the cement walls.

He nevertheless tackles a couple of beginner bowls as other kids gawk and whisper, wondering what has happened to this boy. Though tentative, David holds his own and earns some appreciative gazes for, as one boy curiously remarked, "going for it."

Declaring the day his best in a year, he vows to return.

The girls, after five years, has worn off the celebrity status bestowed upon the little New

York boy, set afire by his father March 3, 1983, and scarred beyond recognition — the comeback kid heralded in front-page headlines, the 6-year-old who battled back from near-fatal burns and captured America's heart with his determination to live.

After months of surgeries to graft skin on the third-degree burns that ravaged 80 percent of his body — first at University of California, Irvine, Medical Center and later at the Shriners Burn Institute in Boston — David triumphantly returned home to his mother's Brooklyn brownstone, where he was greeted by more than 1,000 people who had filled the streets, waving streamers and banners.

He went back to grade school. He was the

See Page F-7, APR 14



The Associated Press

Marta and David Rothenberg

## AFRAID OF FUTURE: Burned boy wants his father kept behind prison bars

Continued from Page F-1

campus champ, the boy to befriend, even after he and his mother, Marie Rothenberg, began a new life in Fullerton with a friendlier climate and closer proximity to his plastic surgeon.

But the boy whose triumphs have inspired burn victims nationally is now on the verge of adolescence. And sometimes, he says with a sigh, just growing up is "hard."

A new chapter in this story of a jealousy-consumed father who used his most powerful weapon to hurt the wife who divorced him has thrown an undertow of terror into their otherwise stable routines.

The man who forever changed their lives with a 2 1/2-gallon jug of kerosene and a match, Charles David Rothenberg, is scheduled to be paroled less than two years from now. He has announced in an interview with the Los Angeles Times that he intends to move to Whittier, Calif., 20 minutes away from the boy and his mother.

It doesn't seem fair, Marie Rothenberg says, her eyes filling with tears, that impending adulthood will impose its own brand of sentencing on David while his father will be free Dec. 11, 1989.

"Write this down," David says. "I don't want him getting out, because I'm afraid he'll hurt me. . . . I never want to see him again."

While the fire propelled the family into the public's attention, the tragedy probably began a generation ago. Neither parent had "Father Knows Best" upbringings, and their son would not either.

Marie Siderowicz grew up in Pennsylvania with eight brothers and sisters. Their mother was an alcoholic. The parents divorced. The mother abused her children, so they were taken from her and given to their father. They had a stepmother who "invented the word wicked," Marie said. Of her family life, she said, "It was hard."

Rothenberg claims to have been born to a prostitute who deposited him at an orphanage in the Bronx, where she periodically visited him. This was more painful than not having a mother at all, he said, because it left no question for the other children and himself that he was unwanted.

By all accounts, Rothenberg was still a doting and nurturing father. "He was always a good provider, a good father," Marie Rothenberg now says. "I never doubted he loved Davey."

Charles bought most or all of the boy's clothes and offered what child support money he could afford from his wages as a cab driver or waiter. He walked his son to and from school almost every day, sometimes carrying him in his arms.

But there was a troubling side to Charles Rothenberg.

He had a criminal record before he was 18. The most serious of his crimes was an attempted armed robbery, for which he was arrested and jailed. Marie, who married Rothenberg in February, 1975, at the age of 25, divorced him in 1978 while he was serving a prison sentence for check forgery.

She never brought David to see his father during that 2-year period, theorizing that the boy was too young to understand and could be told when he was older. But Rothenberg would never forgive her for that.

Police theorized that that may explain, in part, why Rothenberg — who was charged in a warrant with vandalizing and embezzling money from the Manhattan restaurant for which he worked, and who knew Manhattan detectives were after him — decided to take his son with him when he fled New York late that February of 1983.

Rothenberg had picked up his son for what was to have been a week-long stay, first at his home down the street from Marie's and later in the Catskills.

After several days, Marie Rothenberg, unable to reach her son by phone, learned from one of his classmates that David had not been in school all week.

Toward the end of that week, Rothenberg telephoned Marie from Buena Park, Calif. He said that they were at a farm in upstate New York, assured her that David was fine but said that he needed to spend more time with the boy.

Marie, who suspected they were in California because Rothenberg slipped and referred to the time difference, angrily told him that he had no right to keep their son longer than planned and that he would never see his son once they returned to Brooklyn. That pivotal conversation, both parents agree, was to be the trigger for the tragedy.

That same day, father and son went together to a hardware store, where Rothenberg paid \$8.47 for a plastic bottle of kerosene.

The following day, they checked out of a Holiday Inn, where the clerk remembered Rothenberg telling her his son had a terminal disease, "and that he didn't have long to live." It was the morning of March 2.

Before noon, they checked into Room 139 of the nearby Travelodge, where a desk clerk recalled what a striking pair the darkly handsome man and his look-alike son were — and so obviously devoted to each other. David had even been allowed to choose the room that had the waterbed he wanted.

Around midnight, with the help of a pill from his father, David Rothenberg lay sleeping in his underwear and a T-shirt.

The kerosene had been poured around the bedspread and a match was lit within three feet of the door, which was then closed. A motel guest told police that from her second-floor room she saw a man stoop down as though picking up something, and then he shut the motel room door, climbed into his white car and sped off.

When he was halfway to the boulevard, there was an explosion. Room 139's window blew out, and motel guests remember hearing screams and sobs coming from behind the wall of flames.

Rothenberg was arrested at a San Francisco YMCA a week after the fire. He confessed to police and reporters that he tried to kill his son because he had decided, "If I can't have him, nobody can." He steadfastly refused to consider the possibility of an insanity plea and was given the maximum sentence at the time, 13 years, by a judge who later wept in his chambers.

Rothenberg is now in Soledad State Prison, surrounded by the Gablan Mountains in the Salinas Valley, right off U.S. 101.

There are 5,500 inmates there, about 200 of them, like Rothenberg, housed in protective custody. That is where inmates who have committed particularly heinous crimes are kept for their own safety.

The father who set his son afire lives in the same cellblock as Sirhan B. Sirhan, the man who killed Robert F. Kennedy, and mass murderer Juan Corona.

He said he agreed to an interview in hopes that he will receive "help in reaching my son" in a reunion that "could ultimately help David."

He admitted, however, that nothing really prevents him from corresponding with his boy, other than the difficulty in finding words for his guilt and regret.

Rothenberg, without hesitation, calls the fire "the act," "the tragedy" or "this situation" or "what happened." He says he will never forgive himself and expects that most others will not either. In fact, he realizes that David and his mother "are probably very angry at me. I mean, look what I've done."

Rothenberg answered almost every question except the one that mattered most, the one that won't go away, the question that even his fellow inmates ask him: Why?

He described what he was thinking in the hours before the fire, but he did not explain why a man afraid of losing the most important person in his life would try to kill him. Each time he was asked, he brought up his former wife.

"It's hard, it's . . . it's difficult, you know? God, I don't know . . ." Rothenberg said. "It had a lot to do with that phone call with Marie. . . the way I was treated. I was an angry person. I wasn't angry with my son. . . My problem was, I'm sorry I took it out on my own kid. . . Marie, I'm not trying to justify my act, but . . . I was mad at Marie and took it out on the wrong person."

He remembers kissing his son goodbye before torching him, and said: "I wish I would have died with him. Actually, I feel like a coward; I feel like I should've died."

Once he is released, he said, he is not sure what he will do beyond getting a job, and he doesn't know what that would be.

"I have no idea," he said, running his hands through his hair.

Does he think he can resist the urge to see his son, the single purpose he said he has for living, especially if he lives nearby?

"I've come to the conclusion that it's up to Marie and my boy" whether there will be a father-son reunion, Rothenberg said. "It must be devastating for her (as a parent) like it is for myself . . . because people are very, very cruel out there.

"But I don't plan — and make it clear — I don't plan to hurt anybody. God, no!"

Psychologists and experts in child murder and abuse say it is difficult to find common denominators among parents who harm or kill their offspring, although it is not as unusual as one might think. Frequently, the specialists say, the parent has low self-esteem, was himself socially isolated, neglected or abused as a child, and feels a lack of control about his or her life.

But there are also parents who have been tortured terribly by their own families who never hurt anyone.

Under determinant sentencing laws, 13 years was the maximum penalty Orange County Superior Court Judge James Franks could give Rothenberg for one count of attempted murder and two counts of arson that included great bodily injury. Public outrage over cases in which victims have been disfigured but survived attempted murders, as in the cases of Rothenberg and Lawrence Singleton, who hacked off the forearms of a teen-age girl in Northern California, have resulted in increases by state lawmakers in prison time for virtually all serious felonies.

The work-incentive law allows prisoners one day off for every day they work or participate in an education program, up to half their sentence. That means that if Rothenberg continues to be a model prisoner, he will have been imprisoned 6½ years for his crimes.

There is not a lot of elaboration about emotions at the age of 11, when hugging your mother in public is considered "gross." Occasionally David shares a glimpse. In a school paper on the subject — "If You Could Change Anything in the World, What Would It Be?" — David wrote: "I would change the way people feel about me."

Though in most respects a typical 11-year-old — he turns 12 in June — David is poised beyond his years, a byproduct of exposure to grown-ups and the media and grappling with a tragedy that adults would struggle with. During the trip to the skateboard park, he manned the tape recorder, moving it from his mouth to the driver's like a reporter.

His defense on some subjects is yes-no answers, but he thinks questions through and then responds thoughtfully, speaking clearly. When the topic is his father, he frequently spits out the sentences bitterly.

He loved his dad, he said simply. They had so much fun together. "I was so excited about going to Disneyland with him," he said. It rained much of that week in March, 1983, but it didn't spoil their good time. Father and son went to the Magic Kingdom twice, "played video games and pinball and stuff and, um, my dad played a lot of racquetball," David said.

His father, whom he now calls "crazy," seemed normal, if a bit nervous.

"But then, that night he was like, really weird. He kept repeating himself."

Most of the rest of that night has apparently been blocked from his memory. Despite the sleeping pill he said his father told him was aspirin, David woke up as the fire licked at the edges of the bed. "I woke up and the gas got to me, and I just collapsed right at the door," he said.

David, told that his father has said he still doesn't know why he burned his son, is very sorry and believes a reunion will help them both, reacts strongly, his voice becoming loud. "I think he's lying! About being sorry and wanting to see me! I think he's crazy and, you know," he said, lifting the tape recorder to his mouth, "I don't want to see him again!"

TERMS OF IMPRISONMENT AND AUTHORIZED FINES IN REVISED CRIMINAL CODE

	FIRST FELONY	SECOND FELONY	THIRD FELONY
Sexual Assault in the First Degree; Sexual Abuse of a Minor in the First Degree	4-[8]-30	7½-[15]-30	12½-[25]-30
	5-[10]*-30		
	2½-[5]-20	5-[10]-20	7½-[15]-20
"A" Felony	3½-[7]**-20		
"B" Felony	0-10***	0-[4]-10	3-[6]-10
"C" Felony	0-5***	0-[2]-5	0-[3]-5

MAXIMUM FINES - PERSONS

Murder, Kidnapping,  
Sexual Assault I,  
Misconduct Involving  
Controlled Substance I - \$75,000  
A, B, or C Felony - \$50,000  
A misdemeanor - \$ 5,000  
B misdemeanor - \$ 1,000  
Violation - \$ 300

MAXIMUM FINES - ORGANIZATIONS

All offenses - \$100,000 or  
3 X pecuniary gain -  
whichever is greater

MAXIMUM TERM OF IMPRISONMENT FOR MISDEMEANORS

A misdemeanor - 1 year  
B misdemeanor - 90 days

SENTENCES FOR UNCLASSIFIED FELONIES

Murder I: 20-99 years  
Murder II, Kidnapping,  
Misconduct Involving  
Controlled Substance I: 5-99 years

Number in bracket is presumptive sentence. Number to left is lowest mitigated sentence. Number to right is highest aggravated sentence.

\* Ten year presumptive term applies if defendant possessed a firearm, used a dangerous instrument or caused serious physical injury.

\*\* Seven year presumptive term applies if first A felony conviction, other than manslaughter, and defendant possessed a firearm, used a dangerous instrument or caused serious physical injury or directed offense at peace officer or other emergency responder.

\*\*\* Presumptive sentencing may apply if offense directed at peace officer or other emergency responder.

CLASSIFICATION OF OFFENSES IN REVISED CRIMINAL CODE

UNCLASSIFIED FELONIES

Murder in the First Degree AS 11.41.100 20-99 years	Murder in the Second Degree AS 11.41.110 5-99 years	Sexual Assault I AS 11.41.410 Maximum of 30 years
Kidnapping AS 11.41.300 5-99 years		Sexual Abuse of a Minor I AS 11.41.434 Maximum of 30 years
Misconduct Involving a Controlled Substance I AS 11.71.010 5-99 years		

CLASSIFIED FELONIES

A	B	C
Attempted Unclassified Felony AS 11.31.100(d) (1)	Attempted A Felony AS 11.31.100(d) (2)	Attempted B Felony AS 11.31.100(d) (3)
Solicitation of Unclassified Felony AS 11.31.110(c) (1)	Solicitation of A Felony AS 11.31.110(c) (2)	Solicitation of B Felony AS 11.31.110(c) (3)
Manslaughter AS 11.41.120	Assault II AS 11.41.210	Criminally Negligent Homicide AS 11.41.130
Assault I AS 11.41.200	Sexual Assault II AS 11.41.420	Assault III AS 11.41.220
Robbery I AS 11.41.500	Sexual Abuse of a Minor II AS 11.41.436	Custodial Interference I AS 11.41.320
	Unlawful Exploitation of a Minor	Sexual Abuse of a Minor III AS 11.41.220

<p>Robbery I AS 11.41.500</p> <p>Arson I AS 11.46.400</p> <p>Escape I AS 11.56.300</p> <p>Promoting Prostitution I AS 11.66.110(a)(2)</p> <p>Criminal Possession of Explosives with Intent to Commit Murder or Kidnapping AS 11.61.240(b)(1)</p> <p>Misconduct Involving Controlled Substance II AS 11.71.020</p>	<p>Sexual Abuse of a Minor II AS 11.41.436</p> <p>Unlawful Exploitation of a Minor AS 11.41.436</p> <p>Robbery II AS 11.41.510</p> <p>Extortion AS 11.41.520</p> <p>Theft I AS 11.46.120</p> <p>Issuing a Bad Check, \$25,000 or more AS 11.46.280(d)(1)</p> <p>Burglary I AS 11.46.300</p> <p>Arson II AS 11.46.410</p> <p>Criminal Mischief I AS 11.46.480</p> <p>Forgery I AS 11.46.500</p> <p>Scheme to Defraud AS 11.46.600</p> <p>Defrauding Creditors, \$25,000 or more AS 11.46.730(c)(1)</p> <p>Bribery AS 11.56.100</p>	<p>Sexual Abuse of a Minor III AS 11.41.220</p> <p>Incest AS 11.41.450</p> <p>Coercion AS 11.41.530</p> <p>Theft II AS 11.46.130</p> <p>Concealment of Merchandise, \$500 or more AS 11.46.220(c)(1)</p> <p>Removal of Identification Marks, \$500 or more AS 11.46.260(b)(1)</p> <p>Unlawful Possession (of Altered Property), \$500 or more AS 11.46.270(b)(1)</p> <p>Issuing a Bad Check, \$500 or more AS 11.46.280(d)(2)</p> <p>Fraudulent Use of a Credit Card, \$500 or more AS 11.46.285(b)(1)</p> <p>Obtaining a Credit Card by Fraudulent Means AS 11.46.290(a)(1), (2)</p> <p>Burglary II AS 11.46.310</p> <p>Criminal Mischief II AS 11.46.482</p>
---	---	--

<p>AS 11.46.270 (b) (1)</p> <p>Issuing a Bad Check, \$500 or more AS 11.46.280 (d) (2)</p> <p>Fraudulent Use of a Credit Card, \$500 or more AS 11.46.285 (b) (1)</p>	<p>Criminal Mischief I AS 11.46.480</p> <p>Forgery I AS 11.46.500</p>	<p>AS 11.46.270 (b) (1)</p>
<p>Obtaining a Credit Card by Fraudulent Means AS 11.46.290 (a) (1), (2)</p> <p>Burglary II AS 11.46.310</p> <p>Criminal Mischief II AS 11.46.482</p> <p>Forgery II AS 11.46.505</p> <p>Criminal Possession of Forgery Device AS 11.46.520</p> <p>Criminal Simulation \$500 or more AS 11.46.530 (b) (1)</p> <p>Tampering with a Witness I AS 11.56.540</p> <p>Offering a False Instrument for Recording AS 11.46.550</p> <p>Misapplication of Property \$500 or more AS 11.46.620</p> <p>Falsifying Business Records AS 11.46.630</p>	<p>Scheme to Defraud AS 11.46.600</p> <p>Defrauding Creditors, \$25,000 or more AS 11.46.730 (c) (1)</p> <p>Bribery AS 11.56.100</p> <p>Receiving a Bribe AS 11.56.110</p> <p>Perjury AS 11.56.200</p> <p>Escape II AS 11.56.310</p> <p>Interference with Official Proceedings AS 11.56.510</p> <p>Receiving a Bribe by a Witness or Juror AS 11.56.520</p> <p>Criminal Possession of Explosives with Intent to Commit a Felony AS 11.61.240 (b) (2)</p> <p>Promoting Prostitution I AS 11.66.110 (a) (1) and (3)</p>	<p>AS 11.46.270 (b) (1)</p>

Escape II  
AS 11.56.310

Interference with Official  
Proceedings  
AS 11.56.510

Receiving a Bribe by a  
Witness or Juror  
AS 11.56.520

Criminal Possession of  
Explosives with Intent  
to Commit a Felony  
AS 11.61.240(b)(2)

Promoting Prostitution I  
AS 11.66.110(a)(1) and (3)

Misconduct Involving Con-  
trolled Substance III  
AS 11.71.030

Criminal Simulation 4300  
or more  
AS 11.46.530(b)(1)

Tampering with a Witness I  
AS 11.56.540

Offering a False Instrument  
for Recording  
AS 11.46.550

Misapplication of Property  
\$500 or more  
AS 11.46.620

Falsifying Business Records  
AS 11.46.630

Commercial Bribe Receiving  
AS 11.46.660

Commercial Bribery  
AS 11.46.670

Defrauding Creditors, \$500-  
\$25,000  
AS 11.46.730(c)(2)

Criminal Use of a Computer  
AS 11.46.740

Endangering Welfare of Minor  
AS 11.51.100

Perjury by Inconsistent  
Statements  
AS 11.56.230

Escape III  
AS 11.56.320

Promoting Contraband I  
AS 11.56.375

Jury Tampering  
AS 11.56.590

Perjury by Inconsistent  
Statements  
AS 11.56.230

Escape III  
AS 11.56.320

Promoting Contraband I  
AS 11.56.375

Jury Tampering  
AS 11.56.590

Misconduct by a Juror  
AS 11.56.600

Tampering with Physical  
Evidence  
AS 11.56.610

Harming a Police Dog I  
AS 11.56.705

Hindering Prosecution I  
AS 11.56.770

False Accusation  
AS 11.56.805

Terroristic Threatening  
AS 11.56.810

Riot  
AS 11.61.100

Distribution of Child  
Pornography  
AS 11.61.125(a)(1), (2)

Promoting or Exhibition of  
Fighting Animals  
AS 11.61.145

Misconduct Involving Weapons I  
AS 11.61.200

Promoting or Exhibition of  
Fighting Animals  
AS 11.61.145

Misconduct Involving Weapons I  
AS 11.61.200

Criminal Possession of  
Explosives with Intent to  
Commit B Felony  
AS 11.61.240(b) (3)

Unlawful Furnishing of  
Explosives  
AS 11.61.250

Promoting Prostitution II  
AS 11.66.120

Promoting Gambling I  
AS 11.66.210

Possession of Gambling  
Records I  
AS 11.66.230

Misconduct Involving Controlled  
Substance IV  
AS 11.71.040

Promoting or Exhibition of  
Fighting Animals  
AS 11.61.145

Misconduct Involving Weapons I  
AS 11.61.200

Criminal Possession of  
Explosives with Intent to  
Commit B Felony  
AS 11.61.240(b) (3)

Unlawful Furnishing of  
Explosives  
AS 11.61.250

Promoting Prostitution II  
AS 11.66.120

Promoting Gambling I  
AS 11.66.210

Possession of Gambling  
Records I  
AS 11.66.230

Misconduct Involving Controlled  
Substance IV  
AS 11.71.040

JAN 0 1985

DEPT. OF CORRECTIONS

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF LAW**

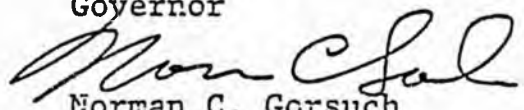
POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

January 8, 1985

M E M O R A N D U M

TO: Honorable Bill Sheffield  
Governor

FROM:   
Norman C. Gorsuch  
Attorney General

RE: Attached bill relating to  
criminal sentences  
Our file no. 377-129-85

Attached is a bill, requested by the criminal division of the Department of Law, which raises the criminal penalties for attempted murder, solicitation to commit murder, manslaughter, and criminally negligent homicide, and makes some badly needed "housekeeping" amendments to present sentencing laws.

As originally proposed, the focus of this bill was to raise the crimes of attempted murder and solicitation to commit murder to the "unclassified" level. This proposal was approved by John Shively on September 4, 1984. As the bill was being drafted, however, its scope was expanded to allow the correction of several other significant problems that exist in our present sentencing laws. Under current law, for example, a person convicted of manslaughter is subject to a presumptive term that is two years less than that imposed upon a person who assaults his victim, but does not kill him.

Although the bill is somewhat broader than originally planned, the amendments it contains are valuable ones that should receive legislative attention.

A draft transmittal letter to the legislature, containing a detailed explanation of the bill, is attached.

NCG:GAH:so

cc w/enc.: Hon. Robert Sundberg, Commissioner  
Dept. of Public Safety

Daniel W. Hickey, Chief Prosecutor  
Dept. of Law

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will increase the penalties for the crimes of attempted murder, solicitation to commit murder, manslaughter, and criminally negligent homicide. The bill also makes some badly needed "housekeeping" changes to existing sentencing laws.

Under present law, a person who attempts to commit or solicits another to commit murder, an unclassified felony, is guilty of only a class A felony. If it is the defendant's first felony conviction, he will be subject to a presumptive term of either five or seven years imprisonment, depending upon the facts of the offense. (AS 12.-55.125(c)(1), (c)(2).)

A deliberate, intentional attempt to kill another person, or the deliberate, intentional solicitation of someone else to commit a murder, are among the most heinous crimes that a person can commit. Only the completed murder itself could be more serious. The penalties prescribed under existing law do not reflect the seriousness of this conduct. Under present law, for example, a parent who improperly touches his eight-year-old child's genitals receives a more severe sentence than that imposed upon a person who deliberately, but unsuccessfully, attempted to kill the child. Sections 1 -- 4 and 10 of this bill cure



this anomaly by raising the crimes of attempted murder and solicitation to commit murder to the "unclassified" level. The crimes will carry a presumptive sentence equal to that now provided for the unclassified felonies of sexual assault in the first degree or sexual abuse of a minor in the first degree. (See AS 12.55.125(i).)

Manslaughter is a class A felony. Under current law, a person convicted of a first offense class A felony faces a presumptive term of seven years if the person knowingly directed his conduct to a uniformed police officer, possessed a firearm, used a dangerous instrument, or caused serious physical injury during the crime, unless the conviction was for manslaughter. AS 12.55.125(c)(2). A defendant convicted of manslaughter is subject to a presumptive term of only five years.

This sentencing "exception" for manslaughter has created an incredible anomaly in existing law. For example, an intoxicated driver who causes a traffic accident in which another person is seriously injured has committed assault in the first degree under AS 11.41.200(a)(1), a class A felony. The drunk driver, if convicted for the assault, faces a presumptive term of seven years. If, however, the victim dies, and the drunk driver is convicted of manslaughter, the defendant's presumptive sentence decreases to five years. This result is one that is difficult to

understand, and even more difficult to explain to a deceased victim's family. Section 8 of this bill removes this "exception", and treats manslaughter the same as any other class A felony.

Section 5 of the bill reclassifies the crime of criminally negligent homicide from a class C to a class B felony level. This raises the maximum possible penalty from five years to 10. (Before the new criminal code took effect in 1980, negligent homicide was considered a form of manslaughter, and carried a penalty of up to 20 years imprisonment). Under present law, the disparity between manslaughter (a class A felony with a maximum term of 20 years) and criminally negligent homicide (a C felony, five year maximum) is too great. The difference between the two crimes is the defendant's mental state at the time of the killing -- "reckless" for manslaughter, "criminally negligent" for criminally negligent homicide. These mental states are defined in AS 11.81.900(a), and the difference between them is not great. Criminally negligent homicide is the unlawful killing of another. Reclassification of this crime to the B felony level will bring the penalty level in line with the seriousness of the offense. In appropriate cases a sentencing court could decide not to impose any jail sentence at all, as a first offense B felony conviction does not carry a presumptive term.

Sections 6 and 7 make some badly needed "housekeeping" amendments to the sentencing laws. When the present criminal code was enacted in 1978, there were only three "unclassified" offenses: murder in the first degree, murder in the second degree, and kidnapping. These three crimes were originally listed, by name, in several places in the code as exceptions to the general classification and sentencing scheme. In the intervening years, other crimes have been raised to the unclassified level, including sexual assault in the first degree, sexual abuse of a minor in the first degree, and misconduct involving a controlled substance in the first degree. In addition, this bill raises attempted murder and solicitation to commit murder to the unclassified level.

It has become increasingly impractical to list all unclassified offenses by name whenever the statutory reference is to the group of offenses. The present system presents the danger that necessary conforming amendments will inadvertently be overlooked when a new crime is added to the unclassified group. This is exactly what happened when the legislature amended the criminal code in 1983 to strengthen the laws against sexual abuse of children. A new unclassified crime, sexual abuse of a minor in the first degree, was created (AS 11.41.434). Through a drafting oversight, however, a reference to this crime was not added to AS 12.55.035, the general provision that

specifies the fines authorized for given offenses. Thus, although a person convicted of sexual abuse in the first degree faces a presumptive term of eight years in prison under AS 12.55.125(i), existing penalty provisions do not include a fine for this offense.

To remedy this oversight, and to ensure that similar errors do not occur in the future, this bill substitutes a reference to unclassified crimes as a group wherever the offenses in this group are now specifically listed by name in the statutes.

The amendments contained in secs. 9, 11, 13, and 15 of the bill are needed for a similar reason. Presumptive terms under the new criminal code were originally imposed under a few subsections of AS 12.55.125. These few subsections were specifically cited in many general provisions that dealt with some aspect of presumptive sentencing (in, for example, the list of aggravating or mitigating factors and the section creating the three-judge sentencing panel). As the criminal code has been amended over the years, however, and presumptive penalties have been added or changed, necessary conforming amendments were not always made, or were not always made completely. This bill cures past discrepancies, and eliminates the problem for the future, by simply substituting a general reference to "presumptive terms" in statutes that now refer to specific

subsections under which a presumptive sentence is imposed.

In 1982 the language of AS 12.55.145(a) was amended to provide that a criminal conviction in another jurisdiction would be considered a "prior conviction" for presumptive sentencing purposes in this state if the out-of-state offense had elements "similar to" those of a crime defined as a felony in Alaska. As the result of a drafting oversight, the language of a companion subsection dealing with procedural matters was not amended. Section 12 of this bill cures this discrepancy by amending AS 12.55.145(c).

The amendments included in this bill are needed to improve existing sentencing laws, and to recognize the seriousness of taking a human life.

Sincerely,

Bill Sheffield  
Governor

Introduced: 1/25/85  
Referred: Health, Education & Social Services  
Judiciary

*note: add sec. 14*  
*(AS 12.55.155(e))*

*addition*

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 102

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal sentences."

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

8 \* Section 1. AS 11.31.100(d) is amended to read:

9 (d) Unless otherwise provided, an [AN] attempt is a

10 (1) class A felony if the crime attempted is an unclas-  
11 sified felony;

12 (2) class B felony if the crime attempted is a class A  
13 felony;

14 (3) class C felony if the crime attempted is a class B  
15 felony;

16 (4) class A misdemeanor if the crime attempted is a class C  
17 felony;

18 (5) class B misdemeanor if the crime attempted is a class A  
19 or class B misdemeanor.

20 \* Sec. 2. AS 11.31.100 is amended by adding a new subsection to read:

21 (e) An attempt to commit murder in the first degree is an un-  
22 classified felony and is punishable as provided in AS 12.55.

23 \* Sec. 3. AS 11.31.110(c) is amended to read:

24 (c) Unless otherwise provided, solicitation [SOLICITATION] is a

25 (1) class A felony if the crime solicited is an unclas-  
26 sified felony;

27 (2) class B felony if the crime solicited is a class A  
28 felony;

29 (3) class C felony if the crime solicited is a class B

1 felony;

2 (4) class A misdemeanor if the crime solicited is a class C  
3 felony;

4 (5) class B misdemeanor if the crime solicited is a class A  
5 or class B misdemeanor.

6 \* Sec. 4. AS 11.31.110 is amended by adding a new subsection to read:

7 (e) Solicitation to commit murder in the first or second degree  
8 is an unclassified felony and is punishable as provided in AS 12.55.

9 \* Sec. 5. AS 11.41.130(b) is amended to read:

10 (b) Criminally negligent homicide is a class B [C] felony.

11 \* Sec. 6. AS 11.81.250 is amended to read:

12 Sec. 11.81.250. CLASSIFICATION OF OFFENSES. (a) For purposes  
13 of sentencing under AS 12.55, all offenses defined in this title,  
14 except unclassified offenses [MURDER IN THE FIRST AND SECOND DEGREE,  
15 SEXUAL ASSAULT IN THE FIRST DEGREE, AND KIDNAPPING], are classified on  
16 the basis of their seriousness, according to the type of injury char-  
17 acteristically caused or risked by commission of the offense and the  
18 culpability of the offender. Except for unclassified offenses [MURDER  
19 IN THE FIRST AND SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE,  
20 AND KIDNAPPING], the offenses in this title are classified into the  
21 following categories:

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

25 (2) class B felonies, which characteristically involve  
26 conduct resulting in less severe violence against a person than class  
27 A felonies, aggravated offenses against property interests, or ag-  
28 gravated offenses against public administration or order;

29 (3) class C felonies, which characteristically involve

1           conduct serious enough to deserve felony classification but not seri-  
2           ous enough to be classified as A or B felonies;

3                   (4) class A misdemeanors, which characteristically involve  
4           less severe violence against a person, less serious offenses against  
5           property interests, less serious offenses against public adminis-  
6           tration or order, or less serious offenses against public health and  
7           decency than felonies;

8                   (5) class B misdemeanors, which characteristically involve  
9           a minor risk or physical injury to a person, minor offenses against  
10          property interests, minor offenses against public administration or  
11          order, or minor offenses against public health and decency;

12                   (6) violations, which characteristically involve conduct  
13          inappropriate to an orderly society but which do not denote criminal-  
14          ity in their commission.

15                   (b) The classification of each felony defined in this title,  
16          except unclassified offenses [MURDER IN THE FIRST AND SECOND DEGREE,  
17          SEXUAL ASSAULT IN THE FIRST DEGREE, AND KIDNAPPING], is designated in  
18          the section defining it. A felony under Alaska law defined outside  
19          this title for which no penalty is specifically provided is a class C  
20          felony.

21                   (c) The classification of each misdemeanor defined in this title  
22          is designated in the section defining it. A misdemeanor under Alaska  
23          law defined outside this title for which no penalty is provided is a  
24          class A misdemeanor.

25          \* Sec. 7. AS 12.55.035(b) is amended to read:

26                   (b) Upon conviction of an offense, a defendant who is not an  
27          organization may be sentenced to pay, unless otherwise specified in  
28          the provision of law defining the offense, a fine of no more than

29                   (1) \$75,000 for an unclassified felony [MURDER IN THE FIRST

1 OR SECOND DEGREE, SEXUAL ASSAULT IN THE FIRST DEGREE, KIDNAPPING, OR  
2 MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIRST DEGREE];

3 (2) \$50,000 for a class A, B, or C felony;

4 (3) \$5,000 for a class A misdemeanor;

5 (4) \$1,000 for a class B misdemeanor;

6 (5) \$300 for a violation.

7 \* Sec. 8. AS 12.55.125(c) is amended to read:

8 (c) A defendant convicted of a class A felony may be sentenced  
9 to a definite term of imprisonment of not more than 20 years, and must  
10 [SHALL] be sentenced to the following presumptive terms, subject to  
11 adjustment as provided in AS 12.55.155 -- 12.55.175:

12 (1) if the offense is a first felony conviction and does  
13 not involve circumstances described in (2) of this subsection, five  
14 years;

15 (2) if the offense is a first felony conviction, [OTHER  
16 THAN FOR MANSLAUGHTER,] and the defendant possessed a firearm, used a  
17 dangerous instrument, or caused serious physical injury during the  
18 commission of the offense, or knowingly directed the conduct con-  
19 stituting the offense at a uniformed or otherwise clearly identified  
20 peace officer, fire fighter, correctional officer, emergency medical  
21 technician, paramedic, ambulance attendant, or other emergency  
22 responder who was engaged in the performance of official duties at the  
23 time of the offense, seven years;

24 (3) if the offense is a second felony conviction, 10 years;

25 (4) if the offense is a third felony conviction, 15 years.

26 \* Sec. 9. AS 12.55.125(g) is amended to read:

27 (g) If a defendant is sentenced to a presumptive term unde:  
28 [(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i) OF] this section, except  
29 to the extent permitted under AS 12.55.155 -- 12.55.175,

- 1 (1) imprisonment may not be suspended under AS 12.55.080;  
2 (2) imposition of sentence may not be suspended under  
3 AS 12.55.085;  
4 (3) terms of imprisonment may not be otherwise reduced.

5 \* Sec. 10. AS 12.55.125 is amended by adding a new subsection to read:

6 (j) A defendant convicted of attempted murder or solicitation to  
7 commit murder may be sentenced to a definite term of imprisonment of  
8 not more than 30 years, and must be sentenced to the following pre-  
9 sumptive terms, subject to adjustment as provided in AS 12.55.155 --  
10 12.55.175:

11 (1) if the offense is a first felony conviction and does  
12 not involve circumstances described in (2) of this subsection, eight  
13 years;

14 (2) if the offense is a first felony conviction, and the  
15 defendant possessed a firearm, used a dangerous instrument, or caused  
16 serious physical injury during the commission of the offense, 10  
17 years;

18 (3) if the offense is a second felony conviction, 15 years;

19 (4) if the offense is a third felony conviction, 25 years.

20 \* Sec. 11. AS 12.55.145(a) is amended to read:

21 (a) For purposes of considering prior convictions in imposing  
22 sentence under AS 12.55.125 [12.55.125(c), (d)(1), (d)(2), (e)(1),  
23 (e)(2), OR (i)]

24 (1) a prior conviction may not be considered if a period of  
25 10 or more years has elapsed between the date of the defendant's  
26 unconditional discharge on the immediately preceding offense and  
27 commission of the present offense unless the prior conviction was for  
28 an unclassified or class A felony;

29 (2) a conviction in this or another jurisdiction of an

1 offense having elements similar to those of a felony defined as such  
2 under Alaska law at the time the offense was committed is considered a  
3 prior felony conviction;

4 (3) two or more convictions arising out of a single, con-  
5 tinuous criminal episode during which there was no substantial change  
6 in the nature of the criminal objective are considered a single con-  
7 viction unless the defendant was sentenced to consecutive sentences  
8 for the crimes; offenses committed while attempting to escape or avoid  
9 detection or apprehension after the commission of another offense are  
10 not part of the same criminal episode or objective.

11 \* Sec. 12. AS 12.55.145(c) is amended to read:

12 (c) If the defendant denies the authenticity of a prior judgment  
13 of conviction, that the defendant is the person named in the judgment,  
14 that the elements of a prior offense committed in another jurisdiction  
15 are similar [SUBSTANTIALLY IDENTICAL] to those of a felony defined as  
16 such under Alaska law, or that a prior conviction occurred within the  
17 period specified in (a)(1) of this section or if the defendant alleges  
18 that two or more purportedly separate prior convictions should be  
19 considered a single conviction under (a)(3) of this section, the  
20 defendant shall file with the court and serve on the prosecuting  
21 attorney notice of denial no later than 10 days before the date set  
22 for imposition of sentence. The notice of denial must [SHALL] include  
23 a concise statement of the grounds relied upon and may be supported by  
24 affidavit or other documentary evidence.

25 \* Sec. 13. AS 12.55.155(a) is amended to read:

26 (a) If a defendant is convicted of an offense and is subject to  
27 a presumptive term [SENTENCING] under AS 12.55.125 [12.55.125(c),  
28 (d)(1), (d)(2), (e)(1), (e)(2), OR (i)] and

29 (1) the presumptive term is four years or less, the court

AS 12.55.165(2)  
(amended)

1 may decrease the presumptive term by an amount as great as the pre-  
2 sumptive term for factors in mitigation or may increase the presump-  
3 tive term up to the maximum term of imprisonment for factors in aggra-  
4 vation;

5 (2) the presumptive term of imprisonment is more than four  
6 years, the court may decrease the presumptive term by an amount as  
7 great as 50 percent of the presumptive term for factors in mitigation  
8 or may increase the presumptive term up to the maximum term of impris-  
9 onment for factors in aggravation.

10 \* Sec. 14. AS 12.55.165 is amended to read:

11 Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant  
12 is subject to a presumptive term [SENTENCING] under AS 12.55.125  
13 [12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i)] and the court  
14 finds by clear and convincing evidence that manifest injustice would  
15 result from failure to consider relevant aggravating or mitigating  
16 factors not specifically included in AS 12.55.155 or from imposition  
17 of the presumptive term, whether or not adjusted for aggravating or  
18 mitigating factors, the court shall enter findings and conclusions and  
19 cause a record of the proceedings to be transmitted to a three-judge  
20 panel for sentencing under AS 12.55.175.

Rodey

POSITION PAPER/Department of Health & Social Services

Position Paper

SB 378

For an Act entitled: "An Act making a special appropriation to the Department of Law for staff to address legal issues surrounding AIDS and other public health matters; and providing for an effective date."

This legislation will fund staff in the Department of Law to address legal issues surrounding AIDS and other public health matters.

Background

As the acquired immune deficiency syndrome (AIDS) problem has grown, legal issues regarding patient record confidentiality, access to treatment, and protection of health care providers have become extremely complex. With the increased federal and state funding to address the disease, Department of Health and Social Services staff are making program expansions that result in greater involvement with the ethical and legal issues surrounding this disease.

In order to avoid legal entanglements that would adversely impact disease prevention activities, additional legal expertise in the Department of Law is necessary. This enhanced legal capacity would also provide the groundwork for responses to any similar public health issue that might arise in the future.

Position

The Department of Health and Social Services supports the contribution that SB 378 will make to the solution of the AIDS problem in Alaska.

Recommended by:

Elizabeth Ward  
Elizabeth Ward, M.N.  
Director  
Division of Public Health

Date:

February 8, 1988

Approved by:

Blanche Beumel, Acting  
Myra M. Munson  
Commissioner  
Department of Health and  
Social Services

FISCAL NOTE

REQUEST:

Revision Date: 1/28/88  
Title: An Act making a special appropriation to . . .  
Sponsor: \_\_\_\_\_  
Requestor: \_\_\_\_\_

Agency Affected: Health & Social Services  
BRU: State Health Services  
Components: AIDS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of SB 378 would have no direct fiscal impact on the Department of Health and Social Services.

Prepared by: Elizabeth Ward, Director *Elizabeth Ward* Phone: 465-3090  
Division: Public Health Date: 2-8-88

Approved by Commissioner: Barbara Bunker Adams *Barbara Bunker Adams* Date: 2/12/88  
Agency: Department of Health & Social Services

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

## ATTORNEY I

### Definition:

Attorney I positions conduct legal research, fact-finding studies, and litigation proceedings under close supervision of experienced attorneys in an office of the Attorney General (including Chief Prosecutor, Special Prosecution and Appeals, and District Attorneys), the Public Defender, or in any other agency, board, or commission when authorized by the Attorney General.

### Definition:

Attorney II positions serve as Assistant Attorneys General, Assistant District Attorneys, Assistant Public Defenders, or in any other agency, board, or commission when authorized by the Attorney General. They conduct the majority of the legal work under general supervision, and learn to assist in the more difficult cases.

## ATTORNEY II

### Definition:

Attorney III positions provide legal services of moderate difficulty as an Assistant Attorney General, Assistant District Attorney, Assistant Public Defender, or in any other agency, board, or commission when authorized by the Attorney General.

## ATTORNEY III

### Definition:

Attorney IV positions render legal services of a difficult nature in a variety of fields of law in an office of the Attorney General (including Chief Prosecutor, Special Prosecutions and Appeals, and District Attorneys), the Public Defender, or in any other agency, board or commission when authorized by the Attorney General.

## ATTORNEY IV

### Definition:

Attorney V positions perform and supervise a variety of complex and specialized legal work in an office of the Attorney General (including Chief Prosecutor, Special Prosecutions and Appeals, and District Attorneys), the Public Defender, or in any other agency, board or commission when authorized by the Attorney General.

## ATTORNEY V

### Distinguishing Characteristics:

This is the entry level to professional legal practice. Attorneys I perform legal research/assistance and court proceedings consistent with Alaska Bar Rule 41 (persons are trained in law but are not bar members). Assignments are made to assist other attorneys, to carry out routine matters, and to become familiar with the agency's legal practice. Immediate supervision may be required as experience is gained; however, all work is subject to close review while in progress or on completion. This is an in-training class that may be used for substituting positions which are classified at a higher level.

### Distinguishing Characteristics:

This is the initial level of professional law practice following admission to the Alaska State Bar. Attorneys II are assigned to complete routine noncomplex cases or legal problems independently. In such cases/problems, the legal or factual aspects are relatively easily resolved in light of well-established precedents or policies and clearly applicable precedents. Legal sanctions or penalties pursued are not complex. Attorneys II are assigned to assist attorneys in more complex cases where considerable research and analysis are needed. Work at this level is typically subject to technical review and review. Training and experience are gained in a variety of the agency's work. This class may be used for substituting positions classified at a higher level.

### Distinguishing Characteristics:

This is the first experienced level of professional practice. Attorneys III do a variety of work independently, including precedent research and policy matters are not involved. They are expected to research precedent, the factual and procedural needs of the cases or legal problems in the technical area, and also may assist more senior attorneys with portions of the completed work. Assigned work is typically reviewed for substantive findings and conclusions. Assigned cases or legal problems are often difficult due to fact of clear precedents, or applicable precedents are arguable due to factual complexity or procedural construction that could be placed on the facts or law or precedent involved. Assignments may require development of an extensive factual record.

### Distinguishing Characteristics:

This is the typical full working level class. Broad knowledge of legal precedents and trends is required for application to the cases assigned. Attorneys IV provide a variety of legal services and work independently in most cases, and also may assist more senior attorneys with portions of the completed work. Assigned work is of great significance. Attorneys at this level are expected to research the law, to provide the substantive and procedural analysis to provide complete analysis and responses to the substantive and procedural issues, and to provide complete policy or precedent effect. Assigned cases or legal problems often involve difficult legal issues (e.g., several and conflicting issues, precedents are lacking or highly arguable) difficult policy issues, or significant potential ramifications. Assignments may also require supervising other attorneys in specific legal matters.

### Distinguishing Characteristics:

This is the "expert" or supervisory class. They serve as section chiefs, as District Attorneys or Assistant Public Defenders or as appellate review geographic areas. Attorneys V are highly technical and specialized areas of law. Attorneys V who do not have a regularly assigned subordinate staff also frequently direct the work of other attorneys, e.g., contract attorneys or other agency staff, on large and difficult cases. Assignments performed at this level are often large and either time-consuming or need immediate response, and, therefore, the Attorney V leads a team effort.

Attorneys V work independently except in extraordinary cases. They work with the highest level of complexity and difficulty. For example, where a high level of original and creative legal endeavor is required to obtain a reasonable balance of conflicting interests. Complex factual or policy issues require extensive research, analysis, obtaining and evaluating expert testimony or information in controversial or highly technical areas (scientific, financial, corporate, etc.). Cases typically have substantial impact on large-scale and important activities of state agencies or public or private parties, and cases are often contested by extremely capable legal talent.

### Example of Duties:

Conduct legal and factual research related to litigation, legal questions of the Alaska State Bar, and other matters. Prepare memoranda, reports, and affidavits. Analyze information and develop findings and recommendations.

Assist in preparing briefs, motions, cases, legal advice, opinions, legislation and regulations. Participate in arrangements, pleas, bail hearings, sentencing and in-chambers conferences. Write pleadings and trial memoranda. Prepare witness for testimony.

### Example of Duties:

Review legislative measures, statutes, regulations, rules and other legal action, and case histories. Analyze and make recommendations concerning proposed laws and regulations. Assist with drafting to assure constitutionality and absence of conflict with other laws.

Evaluate precedents, legislative intent, and potential effect of recommendations. Prepare pleadings, motions, trials and other legal proceedings when area of responsibility includes some depth of research in a general area.

Act as defense attorney or prosecuting attorney in average types of misdemeanor trials. Assist in more difficult litigation such as complex regulatory crimes, felonies or appeals.

### Example of Duties:

Draft informal opinions to interpret and apply legislation, regulations or other laws on issues or cases. Assist in drafting formal opinions involving limited legal or policy issues or cases. Prepare memoranda, reports, and affidavits. Interpret or recommend changes to a written document. Prepare, evaluate, comprehensive studies of legal questions where development of all background material is required. Perform legal investigations.

Advise and assist State agencies in conducting hearings and conferences and in preparing findings of fact, conclusions of law and decisions. May be designated to serve as counsel to a specialized State agency.

Serve as defense attorney or prosecuting attorney in all types of misdemeanor trials or class B or C felony trials. Conduct sentence appeals, misdemeanor appeal, or less complex felony writ appeals.

May be assigned cases in rural areas.

### Example of Duties:

Provide legal advice and prepare formal opinions, legislation, regulations, rules, contracts and a variety of other documents, and present cases that involve highly technical as well as legal procedural complexity and may have the effect of substantially broadening or restricting activities of an agency or major public or private interests. Negotiate settlements of average difficulty.

Serve as counsel to specialized State agencies. Present analysis, conclusions and advice to agency executives. Conduct sentence appeals, misdemeanor appeal, or less complex felony writ appeals. Conduct sentence appeals, misdemeanor appeal, or less complex felony writ appeals. Represent the agency and present cases in rural areas.

Act as defense attorney or prosecuting attorney for all types of felony cases. Conduct felony appeals. Negotiate settlements or charges of plea. Screen cases to determine appropriate action or assignment in the agency. Routinely represent the agency and present cases in rural areas.

Periodically supervise 1-2 attorneys in matters involving particular legal experience.

### Example of Duties:

Act as legal expert and perform legal services related to one or more specialized fields of law.

Determine how a variety of legal problems will be dealt with (e.g., formal or informal opinion, litigation, negotiated settlement, etc.) and direct the response.

Draft formal opinions, legislation, regulations and other legal instruments involving complex legal and technical issues.

Responsible for development and presentation of cases in various state and federal courts. Present cases involving complex constitutional problems before the U.S. Supreme Court.

Conduct the most difficult civil litigation. Develop and argue serious Class 3 felony and unclassified criminal cases and appeals. Obtain and evaluate expert testimony and information in highly specialized, technical and/or controversial areas.

Assign cases and supervise other attorneys. Advise on the selection of legal staff to perform work for the agency. Evaluate work of others.

Knowledge, Skills and Abilities:

Knowledge of general legal principles and practices, administrative, and constitutional law, legal procedure, methods of legal research, and rules of evidence.

Ability to gather facts, weigh variables, analyze and make recommendations on legal questions; prepare concise written reports on facts and applicable law and precedents; establish and maintain cooperative relationships with those contacted in the work.

Knowledge, Skills and Abilities:

Knowledge of general legal principles and their applications, the powers, functions and duties of the Attorney General, District Attorney or Public Defender; methods and tactics employed in the prosecution and defense of noncomplex legal actions in courts or before administrative agencies; methods and procedures involving judicial review of noncomplex administrative decisions; methods and tactics employed in noncomplex appellate court work. (Specifies Caseload on agency assignment.)

Ability to prepare briefs, opinions and pleadings in noncomplex legal matters; carry out legal research; analyze legal documents and instruments for clarity and legal sufficiency; assemble, appraise and organize facts and logically, clearly, and concisely present noncomplex evidentiary matters and other materials in accepted oral and written legal forms; work effectively with attorneys, agency personnel and the public.

Knowledge, Skills and Abilities:

Knowledge of general legal principles and their applications; the State statutes and their judicial interpretation and precedents; the powers, functions and duties of the Attorney General, District Attorney or Public Defender; methods and tactics employed in the prosecution and defense of legal actions in courts or before administrative agencies; methods and procedures involving judicial review of administrative decisions; methods and tactics employed in appellate court work. (Specifies on agency assignment.)

Ability to prepare briefs, opinions and pleadings; carry out legal research; analyze legal documents and instruments for clarity and legal sufficiency; assemble, appraise and organize facts and to logically, clearly and concisely present evidence and other materials in accepted oral and written legal forms; work effectively with attorneys, agency personnel and the public.

Knowledge, Skills and Abilities:

Considerable knowledge of general legal principles and their application with particular reference to the activities and authority of governmental agencies; the State statutes and their judicial interpretation and precedents; the powers, functions and duties of the Attorney General, District Attorney or Public Defender; methods and tactics employed in the prosecution and defense of legal actions in courts or before administrative agencies; methods and procedures involving judicial review of administrative decisions; methods and tactics employed in appellate court work. (Specifies on agency assignment.)

Ability to analyze highly complex legal documents for clarity and legal sufficiency; assemble, appraise and organize facts and to logically, clearly and concisely present evidence and other matters in accepted oral and written legal forms; work effectively with attorneys, agency officers and executives, and the public.

Demonstrated skill in the preparation of briefs, opinions and pleadings, and in carrying out legal research of a difficult nature.

Knowledge, Skills and Abilities:

Extensive knowledge of general legal principles and their application with particular reference to the activities and authority of governmental agencies, and of the powers, duties and functions of the Attorney General, District Attorney or the Public Defender (depends on agency assignment).

Thorough knowledge of state statutes and their judicial interpretation and precedents with extensive knowledge in the specialized field of law; methods and tactics employed in the prosecution and defense of legal actions in courts and in conducting procedures before administrative agencies, both state and federal; methods and tactics employed in appellate court work, both state and federal. Knowledge of principles of personnel supervision.

Ability to analyze the most complex legal documents and instruments for clarity and legal sufficiency; assemble, appraise and organize facts and to logically, clearly and concisely present evidence and other matters in accepted oral and written legal forms; train, supervise, plan, organize and evaluate the work of junior staff attorneys; work effectively with attorneys, agency heads, and the public; carry out legal assignments with minimal supervision.

Skill in the preparation of briefs, opinions and pleadings, and in carrying out legal research of a highly difficult nature.

Minimum Qualifications:

Graduation from an approved school of law. (This class is partially exempt.)

Minimum Qualifications:

Admission to the Alaska State Bar. (This class is partially exempt.)

Minimum Qualifications:

Admission to the Alaska State Bar and at least two years of legal experience. (This class is partially exempt.)

Minimum Qualifications:

Admission to the Alaska State Bar and at least four years of legal practice. (This class is partially exempt.)

Minimum Qualifications:

Admission to the Alaska State Bar and at least five years of legal practice that includes substantial experience in a specialized area of practice. (This class is partially exempt.)

# Alaska State Legislature

SENATOR PAUL FISCHER, Chairman  
SENATOR JOE JOSEPHSON, Vice Chairman  
SENATOR LLOYD JONES  
SENATOR JAY KERTULLA  
SENATOR RICK HALFORD



P. O. BOX V  
ROOM 508  
STATE CAPITOL  
(907) 485-3762

## Senate Committee on Health, Education and Social Services

### INTENT LETTER

CS FOR SB 378

It is the intent of the Senate Health, Education and Social Services Committee by recommending do pass SB 378, that the Department of Law hire an Attorney II, range 19 in Juneau. It is also the intent of the HESS Committee to request that the Department use existing equipment as opposed to the purchase of new equipment.

Explanation of reduction in the appropriation for SB 378

Original App.	92,400.00
Difference in salary and benefits between an Attorney IV and an Attorney II	19,590.84
Exact Dollar Difference	72,809.16
Total Current Appropriation	72,800.00
above rounded to the nearest 100.00	

ATTORNEY I	Range 16	2,715.00/mo*
ATTORNEY II	Range 19	3,353.00/mo*
ATTORNEY III	Range 22	4,095.00/mo*
ATTORNEY IV	Range 24	4,687.00/mo*
ATTORNEY V	Range 25	5,021.00/mo*

\*ABOVE DOES NOT INCLUDE BENEFITS AT APP. 31% OF BASE SALARY



0010 SALARY SCHEDULE

STATE OF ALASKA

SCHEDULE A

BASE SCHEDULE

BARGAINING UNIT - (X) PARTIALLY EXEMPT

MONTHLY - HOURLY 07/16/85

RANGE NO.	STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G	STEP H	STEP I	STEP J	STEP K	STEP L	STEP M	RANGE NO.
21 MONTHLY 37.5 H/W	3,831.00	3,974.00	4,095.00	4,246.00	4,379.00	4,537.00	4,707.00	4,884.00	5,067.00	5,257.00	5,452.00	5,652.00	5,857.00	21
	23.58	24.46	25.20	26.13	26.95	27.92	28.97	30.06	31.18	32.35	33.58	34.86	36.18	
22 MONTHLY 37.5 H/W	4,095.00	4,246.00	4,379.00	4,537.00	4,687.00	4,859.00	5,041.00	5,230.00	5,426.00	5,629.00	5,837.00	6,050.00	6,268.00	22
	25.20	26.13	26.95	27.92	28.84	29.90	31.02	32.18	33.39	34.64	35.94	37.24	38.58	
23 MONTHLY 37.5 H/W	4,379.00	4,537.00	4,687.00	4,859.00	5,021.00	5,209.00	5,404.00	5,607.00	5,817.00	6,035.00	6,258.00	6,486.00	6,719.00	23
	26.95	27.92	28.84	29.90	30.90	32.00	33.26	34.50	35.80	37.14	38.52	39.94	41.40	
24 MONTHLY 37.5 H/W	4,687.00	4,859.00	5,021.00	5,209.00	5,385.00	5,568.00	5,777.00	5,994.00	6,219.00	6,452.00	6,691.00	6,935.00	7,184.00	24
	28.84	29.90	30.90	32.06	33.14	34.26	35.55	36.89	38.27	39.70	41.17	42.65	44.18	
25 MONTHLY 37.5 H/W	5,021.00	5,209.00	5,385.00	5,568.00	5,773.00	5,990.00	6,215.00	6,448.00	6,690.00	6,941.00	7,191.00	7,441.00	7,691.00	25
	30.90	32.06	33.14	34.26	35.53	36.86	38.25	39.68	41.17	42.71	44.25	45.84	47.46	
26 MONTHLY 37.5 H/W	5,209.00	5,385.00	5,568.00	5,773.00	5,990.00	6,206.00	6,439.00	6,680.00	6,931.00	7,191.00	7,450.00	7,718.00	7,995.00	26
	32.06	33.14	34.26	35.53	36.86	38.19	39.62	41.11	42.65	44.25	45.84	47.46	49.11	
27 MONTHLY 37.5 H/W	5,385.00	5,568.00	5,773.00	5,990.00	6,206.00	6,442.00	6,684.00	6,935.00	7,195.00	7,465.00	7,735.00	8,015.00	8,295.00	27
	33.14	34.26	35.53	36.86	38.19	39.64	41.13	42.68	44.28	45.94	47.64	49.38	51.16	
28 MONTHLY 37.5 H/W	5,568.00	5,773.00	5,990.00	6,206.00	6,442.00	6,666.00	6,916.00	7,175.00	7,444.00	7,723.00	8,011.00	8,309.00	8,617.00	28
	34.26	35.53	36.86	38.19	39.64	41.02	42.56	44.15	45.81	47.53	49.29	51.09	52.92	
29 MONTHLY 37.5 H/W	5,773.00	5,990.00	6,206.00	6,442.00	6,666.00	6,901.00	7,160.00	7,429.00	7,708.00	7,997.00	8,295.00	8,603.00	8,921.00	29
	35.53	36.86	38.19	39.64	41.02	42.47	44.06	45.72	47.43	49.21	51.03	52.89	54.78	
30 MONTHLY 37.5 H/W	5,990.00	6,206.00	6,442.00	6,666.00	6,901.00	7,144.00	7,412.00	7,690.00	7,978.00	8,277.00	8,585.00	8,903.00	9,231.00	30
	36.86	38.19	39.64	41.02	42.47	43.96	45.61	47.32	49.10	50.94	52.81	54.72	56.66	

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701-4679

P. O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
465-3603

March 7, 1988

Honorable Paul Fischer  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

Re: SB 378

Dear Senator Fischer:

Thank you for asking the Department of Law to comment on SB 378. This appropriation would allow the Department of Law to add an attorney to our staff. The attorney would be responsible for identifying and dealing with the legal issues which face the state as a result of the AIDS epidemic. This new position will contribute not only to the department's ability to respond to requests for legal assistance from the Department of Health and Social Services but will enhance the department's response to all other agencies in state government who are or will be affected by the unique challenge of the AIDS epidemic.

There are a multitude of legal issues which have arisen in other jurisdictions as well as in Alaska as a result of the growing concern regarding the government's response to AIDS. For instance, decisions which the state makes regarding dealing with its own employees who may be seropositive are concerns which face the state's personnel administrators. Another personnel issue concerns what protection state employees may need if they are employed in positions where they may come into contact with contaminated blood or where they provide care for persons who are or may be seropositive.

The Department of Education also may have questions about what AIDS policies should be mandated in the schools of the state. Likewise, the Departments of Correction and Public Safety will have questions regarding their responsibility for those persons in their custody and to the public as well.

The Department of Health and Social Services would probably serve as the focus for policy decisions and as such will need frequent general counsel advice. Confidentiality, the duty to warn, privacy, quarantine, and informed consent are just a few

Honorable Paul Fischer  
Alaska State Senate  
Re: SB 378

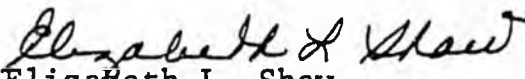
March 7, 1988  
Page 2

of the issues of law which have come to the fore regarding AIDS. The Department of Law's current staff, although anxious to provide requested assistance, does not have additional time to research and then to consult with Department of Health and Social Services' staff.

AIDS as a public health matter is one in which the legal system plays an integral part. For better or worse, the legal system provides the forum for the confrontations which will take place in our country and our state. The purpose of an experienced attorney with expertise in this new and growing area of the law will allow the state to avoid simply drifting and awaiting the decisions made in other places. We will be able to actively assist state officials in determining the course for Alaska. Because of the complexity as well as the sensitivity of the issues involved an experienced attorney is needed to provide the necessary legal assistance. The attached breakdown of costs of an experienced attorney also reflects the need to provide money for travel and to allow the attorney to obtain needed specialized education in this new area of law.

Sincerely yours,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:   
Elizabeth L. Shaw  
Assistant Attorney General

ELS:bap

cc: Bob Evans  
Art Peterson

Salary and Benefits

Attorney IV, Range 24A 72,000

Travel

Provides for travel to:

Anchorage/Juneau/Anchorage - 3 trips -	\$ 1,100	
Anchorage/outside/Anchorage - 1 trip -	900	
Per diem, 20 days at \$80.00	1,600	
AIDS seminar costs	400	
		4,000

Contractual

Communications costs of \$200 per month for postage, telephone, toll calls and copying - \$ 1,200

WESTLAW computerized legal research, \$100 per month - 1,200

Hookup fees to state's mainframe 1,500

5,100

Supplies

Expendable office supplies, \$100 per month - \$ 1,200

Library costs for statutes, Administrative Code, and periodicals and law journals, such as BNA's AIDS Reporter - 1,800

One-time new position costs for non-expendable furniture and PC software - 1,500

4,500

Equipment

Item

1 Desk, 72 x 36	726	
1 Swivel Chair	672	
2 Side Chairs	384	
1 Bookcase	143	
1 Locking 4-Drawer File	280	
1 Dictator	691	
1 PC Table	200	
1 Epic Personal Computer with draft printer, modem, and port circuit card	3,400	

6,496

1/27/88  
RIP

AIDS Legal Advisor  
Cost Summary

Personal Services

Attorney IV at either Juneau or Anchorage 72.3

Travel 4.0

Contractual

Communications/Copy 200pm x 12 = 2,400  
Westlaw 100pm x 12 = 1,200  
One-time DP hookup 1,500 x 1 = 1,500 5.1

Supplies

Office Supplies 150pm x 12 = 1,800  
Library 100pm x 12 = 1,200  
New position 1,500 x 1 = 1,500 4.5

Equipment

New position 1,500 x 1 = 1,500  
PC 5,000 x 1 = 5,000 6.5

---

TOTAL 92.4

Travel provides for trip out of state to attend legal conferences dealing with this rapidly developing legal area (2,000), as well as in-state travel (2,000).

# AIDS lawyers: Advocates in realm of sorrow

By ELIZABETH KASTOR  
The Washington Post

**W**ASHINGTON — Kenneth Labowitz was conducting what he calls "the closing interview." He looked through all the papers one last time, handed his client the settlement check and launched into his routine speech: thanking his client for the opportunity to work for him, urging the man to get in touch if he could be of help in the future.

"Yeah," the man said, bitter, flat. "I'll give you a call the next time I get a terminal illness."

As Labowitz tells the story, two years later, he still recalls from the words. "I thought, 'Ooh! I didn't deserve that! But on the other hand, I understand where he's coming from. And there's nothing to be said.'"

Three months later, his client was dead.

The man was Labowitz's second client with AIDS. Since then, he has represented more than 75 clients on AIDS-related issues, including last year's much-publi-

*'We're doing stuff no one's ever seen before. We're out past Mars. Unexplored territory. . . . It's fascinating work, leaving aside that you're dealing with the greatest human tragedy.'*

— AIDS lawyer Kenneth Labowitz

cized case on behalf of a small girl with AIDS temporarily removed from the Fairfax County, Va., school system.

AIDS patients who have been fired from their jobs, who can't get into school, who are denied medical treatment and who then see his name in the paper call from Virginia, Maryland, West Virginia and North Carolina. By virtue of temperament, experience and chance, Labowitz can laughingly say, "I've sort of defined myself as Mr. AIDS in Virginia."

That he could do that is not surprising, given that the field is so small. Ask one AIDS lawyer who else around the country is doing similar work, and you hear six, sev-

en, eight names, no more. Some, like Mauro Montoya, legal director at Washington's Whitman-Walker Clinic, spend their days writing wills, explaining the intricacies of bestowing power of attorney, rushing to hospitals to resolve conflicts between parents and lovers — work Labowitz calls "Mother Teresa stuff."

Others, like Labowitz, specialize in litigation, sometimes teaming up with groups like the American Civil Liberties Union and Lambda Legal Defense and Education Fund on what they call "high-impact cases," the ones that leap up the rungs of the court system, make precedent and affect thousands.

"The astonishing thing is there's nothing, nothing, paralleling this stuff," Labowitz says. "We're doing stuff no one's ever seen before. We're out past Mars. Unexplored territory."

With few obvious precedents to rely on, these lawyers are essentially writing new law on questions of privacy, breach of contract, civil rights, child custody:

• Should doctors be required to inform the sex partners of someone who has tested positive that they may be carrying the virus?

• Can people be fired because their employers think they might have AIDS?

• What rights does a sick person have to be included in experimental drug trials?

• Does a hospital being sued for malpractice over the death of a patient from AIDS, contracted after receiving blood transfusions, have the right to keep the names of blood donors confidential? (Last week, the U.S. Supreme Court let stand a lower-court ruling that donors' rights to,

See Page F-2, LAWYER

## LAWYER: AIDS issues break new ground

Continued from Page F-1

privacy do not override a Texas woman's need to find their identities in a malpractice case over her daughter's death. The Texas hospital must release the names.)

"There are people writing contracts that include the clause, 'If you get AIDS, you don't get paid,'" Labowitz says. "Now, that's an interesting concept, isn't it? But I don't know if it's illegal."

He laughs at the intellectual gymnastics involved in resolving such quandaries. "It's fascinating work, leaving aside that you're dealing with the greatest human tragedy."

In the years to come, the field will inevitably grow more crowded. Already, more than 100 Washington-area lawyers volunteer their counsel through the Whitman-Walker Clinic. The American Bar Association recently appointed a committee to coordinate AIDS-related activities and make recommendations for AIDS policy.

"I think it's hard to come up with any other phenomenon, whether it be an epidemic or a political phenomenon, that will touch as many lawyers in as many communities around the country," says Harlon L. Dalton, an associate professor at Yale Law School and co-editor of "AIDS and the Law: A Guide for the Public."

And so more and more lawyers will, like Labowitz, discover what comes along with the legal adventures: Men, women and children who most likely will die. It is work that makes emotional demands unlike anything most lawyers — or most anyone — would ever expect to confront, and that hardly anyone is trained to handle.

For someone given to crusades, AIDS law is a galvanizing cause. "AIDS is as clear-cut as any discrimination case you see," Labowitz says. "It's sort of like 1954 in terms of race, and 1964 in terms of gender. People say, 'We fired him because he had AIDS? Of course we did!' They don't realize what they're saying."

What they don't realize is that people with AIDS are gaining protection from feder-

al and local laws prohibiting discrimination against people with handicaps.

"We're going to go through a much faster version of what happened after Brown vs. Board of Education and what happened with gender discrimination. Now, there are still stupid things done, but you won't hear people saying, 'We fired that boy because he's a Negro.' We're sensitized."

Labowitz, who is not gay, came to his latest subject in 1985, when the director of Alexandria's Office of Human Rights, who knew of Labowitz's interest in discrimination cases, gave his name to Whitman-Walker director Jim Graham, a lawyer who was looking for a volunteer attorney to take on the case of Richard Goodfellow. Goodfellow had worked for 12 years as a draftsman for an Alexandria firm, and was fired after he told his boss he had AIDS.

"Ken came to us not as a member of our own community, but as someone interested in civil rights," says Graham. "I had to get comfortable that this was someone who would give compassionate as well as competent representation. That dedication was at once apparent to me."

Labowitz was immediately faced with the realities of AIDS. Sitting in Graham's

office on Christmas Eve 1985, he overheard a phone conversation: The companion and family of a man who had died were at the hospital fighting over the body. "I said, 'I can do the discrimination cases, but I can't do that!'" he remembers.

But there has been no avoiding the singular demands of the work. To argue that a child with AIDS should be allowed to attend school, one must stay on top of the latest medical research on transmission of the virus.

"It's very complicated epidemiologically, and there aren't four lawyers who can spell epidemiology," says Labowitz. "Lawyers are doctors who couldn't pass organic chemistry."

And there are other hurdles. "The kind of people who have selected to practice law may not be the best kinds of people for dealing with issues that are emotionally wrenching," says Yale's Dalton.

"The system would collapse if lawyers were free to make judgments about their clients or feel what they feel. So it's a good profession for people who like to keep a sort of tight rein on their own emotions, and not such a good profession in terms of giving us much practice in figuring out how to feel and do at the same time, without havin';

either activity undermine the other."

"Most of my clients are dying," Labowitz says, "and that's nothing my training prepared me for. The relationship between client and lawyer is bizarre. I make a point to distance myself emotionally from the horror of this."

But ask how he does that, and the generally ebullient lawyer, whose words usually shoot forth as if under pressure, is silent, and remains that way for a long time.

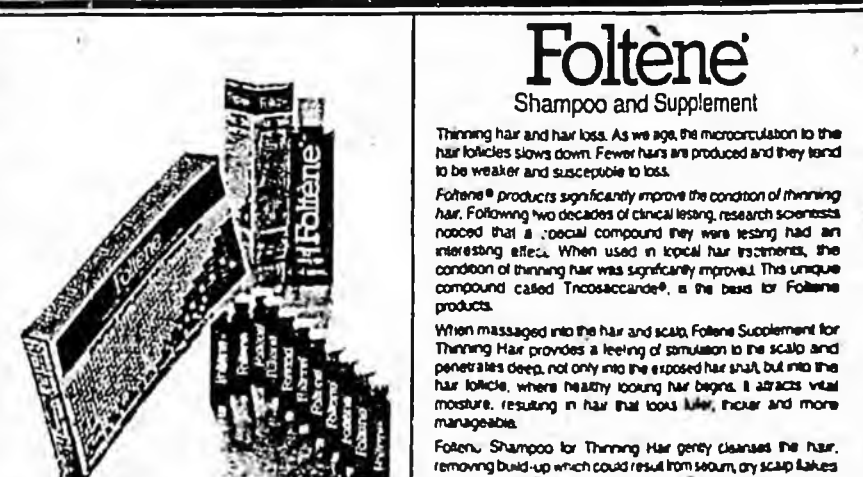
"I guess I tend to make clear what my role is in the professional relationship," he says at last. "I am trying to achieve a set goal in a set time frame with certain limitations. Period. I am not here to be a friend."

It sounds harsh and perhaps he knows it, for he continues, telling the story of his second client and the bitter parting statement. . . .

"What can I say? There's nothing abstract about all this. We're talking about people who have limited options, with a great many problems, some of which are legal. And you do what you can."

"On the other hand, what I can't do, I won't do. And I can't make it better. I can't fix it. Sometimes I can't even fix the legal problems."

For individuals who are serious about their hair care . . .



**Foltene**  
Shampoo and Supplement

Thinning hair and hair loss. As we age, the microcirculation to the hair follicles slows down. Fewer hairs are produced and they tend to be weaker and susceptible to loss.

Foltene® products significantly improve the condition of thinning hair. Following two decades of clinical testing, research scientists noticed that a special compound they were testing had an interesting effect. When used in topical hair treatments, the condition of thinning hair was significantly improved. This unique compound called Tricoscaldone®, is the base for Foltene products.

When massaged into the hair and scalp, Foltene Supplement for Thinning Hair provides a feeling of stimulation to the scalp and penetrates deep, not only into the exposed hair shaft, but into the hair follicle, where healthy looking hair begins. It attracts vital moisture, resulting in hair that looks fuller, thicker and more manageable.

Foltene Shampoo for Thinning Hair gently cleanses the hair, removing build-up which could result from sebum, dry scalp flakes

March 2, 1988  
Anchorage Daily News

REPRESENTATIVE  
PETER GOLL



*Bodey*  
P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4925

STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

APR 29 1988

DATE: April 28, 1988  
TO: Senator Jalmar Kerttula  
Chairman  
Senate Judiciary Committee  
FROM: Representative Peter Goll  
SUBJECT: Abuse of Disabled Persons

Physical and sexual abuse of mentally and physically disabled adults is a problem in Alaska and nationally.

HB 344 establishes mandatory reporting requirements and procedures for investigation of attacks on those adults who are so severely disabled that they are clearly unable to protect themselves.

The Division of Family and Youth Services reports that in 1986, there were 202 actual "reports of harm" to the elderly and 312 "reports of harm" to disabled adults under the age of 65 in Alaska.

That is a total of 514 reported cases in a single year. The reported cases represent only a portion of actual incidents.

I have attached:

1. Letter of support from the "Alaska State Association of Retarded Citizens".
2. Letter of support from the "Association of Retarded Citizens of Anchorage".
3. Letter to Rep. Peter Goll from Mr. David Maltman.

PG:ljb

attachments

# State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
HOUSE JUDICIARY  
HOUSE RULES



P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3718  
465-4968/4986

914 CLAY COURT  
ANCHORAGE, ALASKA 995  
(907) 276-6844

Representative Max F. Gruenberg, Jr.  
District 11  
Spenard, Upper Midtown Anchorage

October 19, 1987

TO: REPRESENTATIVE NIILLO KOPONEN, CO-CHAIR HOUSE HESS  
COMMITTEE  
REPRESENTATIVE JOHNNY ELLIS, CO-CHAIR HOUSE HESS  
COMMITTEE

FROM: MAX F. GRUENBERG, JR. *Max*

RE: INTRODUCING "AN ACT RELATING TO PHYSICALLY AND MENTALLY  
DISABLED PERSONS" AS A HESS COMMITTEE BILL

I would very much appreciate it if we could introduce the attached draft bill as a HESS Committee bill.

This bill clarifies certain portions of SB 1, which was signed into law by the Governor.

Section 1 of the bill requires the driver of a vehicle who causes property damage to a physically disabled person's property, such as a wheelchair, to pay for damages. There is no provision in SB 1, now Chapter 69, SLA 1987, to compensate a victim if his property is damaged or destroyed.

Section 2 clarifies AS 11.76.130(a) to require that a person must intentionally interfere with the rights of a disabled person to be guilty of a Class "B" misdemeanor. Thus, a person repairing his sidewalk, for example, would not be criminalized.

Both of these changes certainly reflect our legislative intent in HB 172 last year, now SB 1, passed this year.

Section 3 removes a superfluous requirement for determining eligibility for driver's licenses. The Division of Motor Vehicles already under (5) of this section, retains the ability to refuse a license or permit for a person with a present mental disability. Many people have received

counseling or, at one time were mentally ill. Very few were legally adjudged incompetent. Fewer still were formally restored to competency by the methods provided by law. The mental health community strongly supports the repeal of AS 28.15.031(a)(4). Subsection (5) gives the DMV sufficient authority to protect the public.

I would like to make a motion at our Friday, October 23 meeting that the HESS Committee sponsor the bill and have it pre-filed.

If any committee member objects or requests any amendment (deletion or addition), please contact me at my law office, 276-6844, and I'll be happy to assist.

Thank you very much.

cc: All HESS Committee members

POSITION PAPER

CSHB 344

"An Act relating to the protection of persons with disabilities and to disabled adults who are victims of physical or sexual abuse."

EFFECT OF CSHB 344

Section 1 amends A.S. 09.65.150(a) to include responsibility for property damage incurred when a driver fails to yield for a physically disabled pedestrian so identified in this Section. "Property" under this Section could relate to the mobility aids and appliances utilized by the pedestrian.

Section 2 amends A.S. 11.76.130(a) and limits the crime of interference to those situations where the rights of a disabled person are intentionally prevented or restricted as described.


Section 3 requires certain professionals to report suspected criminal physical and sexual abuse of a disabled adult to the nearest law enforcement agency provided that the disabled adult is unable to report the abuse. CSHB 344 also provides immunity from liability and retaliation to the individual who is reporting the suspected abuse.

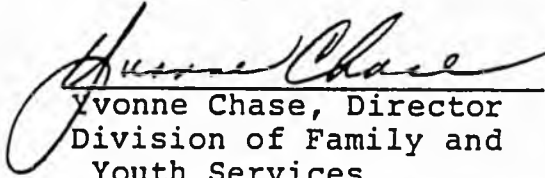
The bill appropriately distinguishes between those disabled people who are capable of reporting crimes themselves from those who cannot due to their disabilities. The former should be allowed to make their own decisions regarding reporting of crimes, while the latter must have assistance or they will go entirely unprotected.

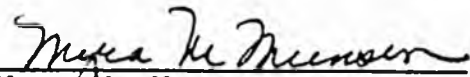
Section 4 repeals A.S. 28.15.031(b) (4) which restricts the issuance of a driver's license if a person has a mental disability and has not been restored by the methods provided by law. This provision is unnecessarily restrictive and redundant. AS 28.15.031 (b) (5) provides the Department of Public Safety the authority to revoke or not grant a driver's license to a person with a mental or physical disability.

The Department of Health and Social Services (DHSS) supports CSHB 344. The department estimates that 312 reports of harm to disabled adults were received in 1986. Although DHSS attempts to respond to reports of abuse of disabled adults, DHSS currently does not have the necessary resources to provide an adequate level of adult protection services statewide. Further, this bill addresses reports of criminal conduct against adults which is appropriately investigated by law enforcement. The efforts of the two agencies working cooperatively in appropriate cases will further the protection available to disabled people.

CSHB 334 helps by providing a mechanism by which people who are aware of criminal physical and sexual abuse of disabled people are required to report these crimes to the appropriate law enforcement agency. In addition, CSHB 344 clarifies existing law with regard to interference with disabled persons.

Recommended by:   
Mel Henry, Director  
Division of Mental Health  
and Developmental Disabilities

  
Yvonne Chase, Director  
Division of Family and  
Youth Services

Approved by:   
Myra M. Munson  
Commissioner  
Department of Health  
and Social Services

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 344 (HESS)  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Relating to the Protection of  
Persons with Disabilities...  
Sponsor: HESS COMMITTEE  
Requestor: \_\_\_\_\_

Agency Affected: HEALTH and SOCIAL SERVICES  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----


FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

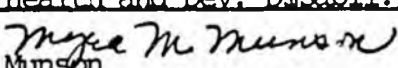
ANALYSIS : (Attach a separate page if necessary)

Prepared by: Mel Henry, Director 

Division: Division of Mental Health and Dev. Disabil.

Phone: 465-3370

Date: 2/29/88

Approved by Commissioner: Myra Munson   
Agency: Health and Social Services

Date: 3/1/88

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)



Association for Retarded Citizens of Alaska, Inc.

2211-A Arca Drive, Anchorage, Alaska 99508 • (907) 277-6677

January 23, 1988

Representative Peter Goll  
513 Capitol Building  
P.O. Box V  
Juneau, Alaska 99811

RE: House Bill 311

For an act entitled, "An Act Relating to Protection of Adults with Disabilities who are Victims of Abuse, Neglect or Exploitation."

Dear Representative Goll:

I am writing this letter in behalf of the Board of Directors of the Alaska State Association of Retarded Citizens, who at its January 16, 1988 Board meeting unanimously supported the passing of House Bill 311.

The Alaska State Association for Retarded Citizens is comprised of families, consumers, and professionals all dedicated to speak out in behalf of the interests and rights of persons who are mentally retarded/developmental disabled. We feel that the bill will provide for the protection of those individuals who due to their disability are not able to speak out for themselves.

Again, our strong support for this bill is encouraged. If I can be of any further assistance, please do not hesitate to contact me at 277-6677.

Sincerely,

Mary Jane Starlings  
Executive Director

Margaret R. Lowe, President  
Board of Directors

MJS/sls  
cc: Fran Ulmer



January 23, 1988

Representative Peter Goll  
513 Capitol Building  
P.O. Box V  
Juneau, Alaska 99811

RE: House Bill 311  
For an act entitled, "An Act Relating to Protection of  
Adults with Disabilities who are Victims of Abuse, Neglect  
or Exploitation."

Dear Representative Goll:

I am writing this letter in behalf of the Board of Directors of the Association of Retarded Citizens of Anchorage, who at its January 14, 1988 Board meeting unanimously supported the passing of House Bill 311.

The Association for Retarded Citizens of Anchorage provides residential services for persons who are mental retarded/developmentally disabled. We feel that this bill will provide for the following:

1. The assurance that adults with mental retardation will live in a safe program providing quality training leading to the least restrictive and most normalized setting possible.
2. That professionals in residential, vocational, respite and other services provided to adults with mental retardation who have reasonable cause to believe that an individual has suffered harm as a result of abuse, neglect or exploitation shall be afforded the opportunity and protection to report the harm to the Department of Health and Social Services.
3. That advocates, families, friends, and consumers who have reasonable cause to believe that an individual has suffered harm as a result of abuse, neglect or exploitation within a program in the State of Alaska has the opportunity to report the harm to the Department of Health and Social Services.

Representative Goll  
JM: ARCA  
DATE: January 23, 1988  
PAGE: 2 of 2

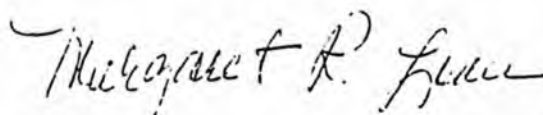
It is all of our responsibilities to advocate in behalf of the interests and rights of persons with mental retardation who may not have the ability to speak out in their own behalf because of their disabilities.

Again, our strongest support for this bill is encouraged. If I can be any further assistance, please do not hesitate to contact me at 277-6677.

Sincerely,



Mary Jane Starlings  
Executive Director



Margaret R. Lowe, President  
Board of Directors

MJS/sls  
cc: Fran Ulmer



**PROTECTION AND ADVOCACY FOR THE DEVELOPMENTALLY DISABLED**

325 E. Third, Suite 400  
Anchorage, AK 99501-2606  
(907) 274-3658 TTD

127 S. Franklin  
Juneau, AK 99801  
(907) 586-1627 TTD

250 Cushman, Suite 3H  
Fairbanks, AK 99701  
(907) 456-1070 TTD

February, 27, 1987

Mr. Peter Goll  
P.O. Box 581  
Haines, Alaska 99827

Dear Representative Goll:

We are glad to respond to your request for suggestions for a bill which would protect vulnerable adults from abuse. For your review, we have enclosed a draft document which includes the ingredients we believe necessary for an optimal approach for legislation to remedy this problem

Most importantly, the draft document we offer establishes a penalty for care givers that do not report the abuse and neglect of people with Developmental Disabilities. This provision alone would do a great deal to rectify the current situation. As your bill moves through the legislature we hope the provision for a penalty can be maintained and passed into law.

We appreciate your concern about this serious situation and you can count on our support for your bill. Your interest and sponsorship for this measure will undoubtedly determine its success.

Again, we are pleased to assist you. Do not hesitate to call if we can provide more information.

Sincerely,

David F. Maltman  
Executive Director

DFM:glf  
Enc.