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HOUSE COMMITTEE REPORT

5-11-92
Finance

(7) C
 Date Referred: May 6, 1992

FURTHER REFERRALS:

Date of Committee Action: 5/10/92

The JUDICIARY Committee considered:

HB 554

HOUSE BILL NO. 554

CRIMINAL LAW: CONSPIRACY, MURDER, ETC.

"An Act relating to murder, kidnapping, controlled substances, and imitation controlled substances offenses; creating the crime of conspiracy and the crime of money laundering; amending a provision relating to general principles of criminal liability."

RECOMMENDATIONS:

be replaced with NS HB 554 (JUD) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

fiscal impact Courts

zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) Corrections 5/6/92

zero fiscal note(s) Law 2/24/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>David D. Dooly</i>	✓				
<i>Terry Hunter</i>		<i>Mark Stuenkel</i>			-
<i>Mark Stuenkel</i>	✓				
<i>Mike Hibel</i>	✓				
<i>Kevin Pat Parnell</i>	✓				

David D. Dooly

 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. CS HB 554 (HES)

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to murder, kidnapping, BRU: Trial Courts
controlled substances,...crime of conspiracy Components: _____
 Sponsor: House Rules Committee by request
 Requestor: _____ COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	296.7	296.7	296.7	296.7	296.7	296.7
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	296.7	296.7	296.7	296.7	296.7	296.7

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	296.7	296.7	296.7	296.7	296.7	296.7
FEDERAL FUNDS						
OTHER						
TOTAL	296.7	296.7	296.7	296.7	296.7	296.7

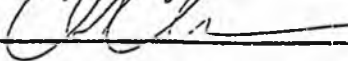
POSITIONS:


FULL-TIME	7.0	7.0	7.0	7.0	7.0	7.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 05/10/92

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 05/10/92
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

This bill creates new crimes relating to conspiracy and money laundering, and amends existing statutes relating to drug offenses. A substantial fiscal impact on the court system is anticipated.

Sections 1 and 2 create a new crime of conspiracy to commit homicide, kidnapping, or certain drug offenses. Their purpose is to create a crime under which persons not presently prosecutable can be prosecuted.

The Department of Law has not estimated the number of prosecutions which will result from these sections. When narrower legislation was considered in 1987, the department projected a need for two additional attorneys, a paralegal, and a secretary, indicating a potentially large caseload. This session OPA has estimated that conspiracy legislation would require it to defend 25 co-defendants per year, in addition to those co-defendants represented by the Public Defender. Experience in other states and at the federal level demonstrates that conspiracy cases generally require extensive pre-trial motion hearings, and are more likely to go to trial than other felony cases.

Section 3 will make it easier for the Department of Law to charge individuals engaged in a continuing criminal enterprise by lowering the number of offenses and the number of individuals involved from that specified in existing law. This section will generate new cases by allowing prosecutors to file more criminal charges against more persons, even though the facts of the case remain unchanged.

As is the case with conspiracy statutes, experience in other states and at the federal level demonstrates that charges of "continuing criminal enterprise" generally require extensive pre-trial motion hearings, and are more likely to go to trial than other felony cases.

Section 4 reclassifies certain drug offenses to the next higher category of offenses, making defendants eligible for higher penalties. The potential for higher penalties generally influences more defendants to demand a jury trial.

Section 5 creates a new crime of money laundering. The language is broadly drafted and can be expected to generate many new cases against persons who are not now prosecutable, such as the spouses of drug dealers as well as persons who provide goods or services to a drug dealer.

Section 6 allows prosecution of a defendant for possession of drugs by consumption (that is, internal possession), thus overturning the decision in State v. Thronsen. It will generate new felony cases.

Sections 7 and 8 are unlikely to have a fiscal impact on the court system.

Alaska Court SystemFiscal Analysis
CS HB 554 (HES)Personal Services

<u>Classification</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge Anchorage, 12 months	\$24,150	\$19,673	\$43,823
Pro Tem Superior Court Judge Anchorage, 12 months	24,150	19,673	43,823
Pro Tem Superior Court Judge Fairbanks, 12 months	24,500	19,711	44,211
Pro Tem Superior Court Judge Juneau, 12 months	24,150	19,673	43,823
In-Court Clerk, 12A, PFT, Anchorage	27,108	11,675	38,783
In-Court Clerk, 12A, PFT, Fairbanks	30,780	12,626	43,406
In-Court Clerk, 12A, PFT, Juneau	27,108	11,675	<u>38,783</u>
Total			<u>\$296,652</u>

FISCAL NOTE

No. 3
 Bill Version: HB 554
 (H) Publish Date: 2-24-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Corrections
 Title: "An Act relating to murder, kid-napping, and controlled substances." BRU: Statewide Programs
 Component: Various

Sponsor: _____
 Requestor: Governor COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	525.6	525.6	1,018.4	1,180.4	1,180.4	1,180.4
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	525.6	525.6	1,018.4	1,180.4	1,180.4	1,180.4

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	525.6	525.6	1,018.4	1,180.4	1,180.4	1,180.4
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	525.6	525.6	1,018.4	1,180.4	1,180.4	1,180.4

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached Analysis.

Prepared By: Diane Schenker, Legislative Liaison Phone: 465-3376
 Division: Commissioner's Office Date: 02/20/92
 Approved by Commissioner: Lloyd Hames, Commissioner *Diane Schenker*
 Agency: Department of Corrections Date: 02/20/92

CONTINUATION OF FISCAL ANALYSIS

BILL: Lawlog 92-0039 "An Act relating to murder, kidnapping, controlled substances and imitation controlled substances offenses; creating the crime of conspiracy and the crime of money laundering; amending a provision relating to general principles of criminal liability."

Sections 1 and 2: These sections make it a crime to conspire to commit murder, kidnapping, or a felony drug offense. Because conspiracies to commit murder or kidnapping are rare, the major impact of the conspiracy law would probably result from drug offenses. The Department of Law predicts that the conspiracy law will facilitate more effective prosecution of cases involving multiple defendants and may encourage defendants to cooperate with the state to get reduced charges. The result will probably be more offenders sentenced for drug charges, but not necessarily sentenced for longer periods of time. On December 31, 1991, a "snapshot" prisoner profile indicated there were 158 offenders incarcerated on felony drug offenses. If the conspiracy law results in a ten percent increase, approximately 16 additional offenders would be expected. The majority of drug offenders are incarcerated for Misconduct Involving a Controlled Substance in the Third Degree, a Class B felony. The mean sentence for such a charge is estimated to be 20.1 months. With a deduction of one third of the sentence for statutory good time, the actual time served would be slightly over one year. Sixteen offenders serving one additional year would result in 5,840 additional bed-days. If the offenders were housed in community residential center beds, at an average daily cost of \$45.00 per day, the additional contract cost per year would be \$262,800.00.

Section 3: This section makes it a Class A felony to engage in a continuing criminal enterprise involving three or more drug offenses committed with two or more other people. This section also elevates certain offenses involving cocaine from a Class B to a Class A felony. The Department of Law estimates that approximately 30 to 40 cases per year would be prosecuted which would be subject to the new penalties. The following analysis is based on a conservative estimate of 30 such cases per year. Based on information from the Department of Law and the Alaska Judicial Council, it is estimated that the average sentence for these types of offenses would increase from about three years to five years. Allowing for statutory good time deductions of one third of the sentence, the actual incarceration time would go from 24 months to 40 months, an increase of 16 months of incarceration per case. The effects of the bill on the prison population, therefor, would not be felt for two years. The effects would then be as follows:

FY 95: 30 offenders who would have been released under current law would remain incarcerated, based on a five year sentence received in FY 93. (30 X 365 = 10,950 prison-days)

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HB554

CONTINUATION OF FISCAL ANALYSIS: LAWLOG 92-0039

FY 96: 30 offenders who would have been released under current law remain incarcerated, based on a five year sentence received in FY 94. This is in addition to 30 offenders (convicted in FY 93) finishing the remaining 4 months of their sentence (30 X 365 = 10,950; plus 30 X 120 = 3600. Total additional prison-days = 14,550)

The FY 96 figure would be repeated in FY 97 and FY 98, assuming the same rate of convictions resulting in five year, rather than three year sentences.

It is assumed that during the last 16 months of these sentences that the offenders would be eligible for placement on furlough to a community residential center and/or residential drug treatment program. The average statewide cost for such beds is approximately \$45.00 per day. Therefor, 10,950 additional bed-days in FY 95 would cost \$492,750.00. Each succeeding year would be \$654,750.00 per year in additional contract beds.

Section 4: This section elevates certain crimes involving large quantities of marijuana from a Class C to a Class B felony. In a "snapshot" inmate profile on December 31, 1991, there were 34 inmates incarcerated for MICS IV, a Class C felony. MICS IV includes possession of an ounce or more of marijuana, as well as a long list of other drug offenses. It is assumed that marijuana offenses make up a small percentage of the 34 MICS IV population, based on the extensive list of offenses included in this category. According to the Alaska Judicial Council, the mean sentence length for MICS IV is estimated to be about 12 months. If ten per cent (10 %) of the MICS IV offenses involved large amounts of marijuana, and would therefor be elevated to a Class B felony, that would be about 3 or 4 cases per year. Because the amount of marijuana addressed is quite large, it is assumed that such offenders would be at the high end of the sentencing range for Class C felonies under current law. Combined with the small number of anticipated cases, this would result in minimal fiscal impact for the Department.

Section 5: ~~This~~ Section creates the crime of money laundering and makes it a Class C felony. Because this section creates a new crime, it is difficult to estimate the number of cases which will result in prison/probation sentences. Based on an assessment from the Department of Law, this type of offense is expected to occur infrequently and therefor impact the Department of Corrections minimally.

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CONTINUATION OF FISCAL ANALYSIS: LAWLOG 92-0039

Section 6: This Section defines "cocaine base" to include crack. It also reverses the recent Thronsen decision which held that a person cannot be prosecuted for "possession by consumption." In Thronsen, the police had a search warrant for a house which authorized them to look for drugs/paraphernalia. The defendant was present and appeared to have ingested drugs, so his blood and urine were tested and confirmed the presence of cocaine. He was charged with possession of paraphernalia as well as possession of cocaine in his blood system. The jury found him not guilty on the syringe charge and the possession by consumption charge was overturned by the courts. The circumstances of this case suggest that charges of "possession by consumption" will strengthen the State's ability to win convictions in drug cases. If this increases the number of felony drug offenders by ten percent, approximately 16 offenders per year will be incarcerated for an average of 12 additional months. If the Department contracted for additional community residential center beds to accomodate this increase, the cost would be 16 offenders X 365 days X \$45.00 = \$262,800.00.

Sections 7 and 8: These sections eliminate certain defenses to offenses involving controlled substances and are not expected to impact the Department fiscally.

The above-mentioned estimates are based on contract community beds since it cannot be accurately predicted when the increases in incarceration days will actually result in adding new prison beds to the current correctional system, based on this bill alone. Therefor, using the daily cost of a prison bed for each additional bed-day would not accurately reflect budget increases, since the cost of each existing bed is already reflected in the Department's budget. However, any increase in the number or lengths of prison or probation sentences will accelerate the need for additional prison construction, additional correctional staff and additional probation officers. The probation population is currently growing at a rate of about 4% per year. The prison population is currently remaining fairly stable.

FISCAL NOTE

No. _____
 Bill Version: HB 554
 (H) Publish Date: 2-24-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to murder, kid- BRU: Prosecution
napping, controlled substances..." Component: All
 Sponsor: By Request of the Governor
 Requestor: Office of the Governor COMPONENT SERIAL NO.

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85 through 91

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services (1) Date: February 18, 1992
 Approved by Commissioner: Richard I. Pegues / ROL
Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 18, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

This bill amends several criminal statutes dealing with murder, kidnapping and drug offenses, and with new crimes relating to conspiracy and money laundering. A section by section analysis follows below.

Section 1 and Section 2. These sections amend AS 11.31, adding a new section making it a crime to conspire with one or more other persons to commit murder, kidnapping or a felony drug offense. These amendments permit the state to stop conspirators short of committing the more serious offense, while permitting the state to prosecute the offenders on conspiracy charges. In major drug prosecutions, the state would be permitted to join several drug dealing offenses with the conspiracy offense, thereby laying out major drug trafficking schemes in a single trial. This ability to consolidate drug charges would reduce the number of trials that are now sometimes required.

For instance, the major effect of a conspiracy law is to permit the introduction of additional evidence in a trial. Thus the jury is permitted to hear, for example, more evidence about the overall drug operation, rather than being limited to evidence about specific drug sales on specific dates. The jury does not therefore view those sales in isolation, but is allowed to see the "big picture", and the state's case is made stronger. We believe that defendants charged under the conspiracy law will cooperate with the state to try to get a reduced charge, and therefore fewer trials will occur. Another potential cost-savings is that multiple defendants charged with conspiracy will be able to be tried in a joint trial, rather than separate trials as is usually the practice now.

To the extent that the crime of conspiracy will be added as another charge, along with the target offense (for example, charging someone with both murder and conspiracy to commit murder), the fiscal impact is not likely to be great. Similarly, if the crime of conspiracy is charged in cases where current law would allow charging as an accomplice (AS 11.16.110), there will not be much additional cost. The department believes that even in cases that cannot be charged under current law, there will not be a significant increase in the number of cases due to the conspiracy law because they will be offset by the efficiencies discussed above. Therefore, these amendments should not have a fiscal impact.

Section 3. This section makes it a class A felony to engage in a continuing criminal enterprise involving three or more drug offenses committed with two or more other people. Existing law

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

makes it an unclassified felony offense to engage in this type of conspiracy when it involves five or more drug offenses committed with five or more additional people. Creating this lesser offense when fewer people and transactions are involved will permit prosecution of small drug rings.

Section 3 also elevates the manufacture or delivery of cocaine, or the possession of cocaine with the intent to manufacture or deliver, from a class B to a class A felony offense when the quantity involved exceeds 500 grams. It also makes it a class A felony to manufacture or deliver, or possess with the intent to manufacture or deliver, five grams or more of a substance containing "crack." The conspiracy provisions in this section will, again, permit us to consolidate charges against small drug rings, and for that reason should not result in a fiscal impact for the department. The other provisions elevating the penalty for manufacturing and dealing of cocaine exceeding 500 grams, and making it a class A felony to manufacture or deliver five grams or more of a substance containing "crack" deal with sentencing and should also not have a fiscal impact.

Section 4. This section elevates the delivery of marijuana or the possession of marijuana with the intent to deliver from a class C to a class B felony offense when the quantity involved exceeds 10 kilograms. This is a sentencing provision and should not cause a fiscal impact for the department.

Section 5. This section creates a money laundering crime, making it a class C felony to take money known to be derived from drug violations. This amendment is intended to bolt the door before it is opened. There will not be a fiscal impact.

Section 6. This section defines "cocaine base," used in Section 3, as including "crack." It also defines "possession" for drug offenses so that a person who has ingested drugs is subject to prosecution to the same extent as those who are found with drugs in their clothes' pockets or at their house. This will have the effect of reversing a Court of Appeals decision, which held that a person cannot be prosecuted for "possession by consumption." This change returns the law to its interpretation prior to the Court of Appeals decision and, consequently, there will not be a fiscal impact.

Section 7. This section strengthens the state's existing "Imitation Controlled Substance Act" by providing that it is not a defense to possessing or distributing illegal imitation drugs that the person believes the imitations are the real thing. This amendment, which prevents a person who has one type of illegal

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

substance from being immune from prosecution because he or she thought it was a different illegal substance, will not have a fiscal impact.

Section 8. This section makes a technical amendment to the criminal statutes to ensure that a person prosecuted for distributing or possessing less than a certain weight of a controlled substance cannot escape conviction by proving that the weight was more than that alleged. This technical amendment will not have a fiscal impact.

FISCAL NOTE

No. 5
 Bill Version: HB 554
 (H) Publish Date: 2-24-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Public Safety
 Title: Criminal Justice Reform BRU: Alaska State Troopers
 Component: Criminal Investigations Bureau

Sponsor: Rules
 Requestor: Governor COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

No substantial fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Gayle A. Horetski Phone: 465-4322
 Division: Commissioner's Office Date: 2/18/92
 Approved by Commissioner: *Gayle A. Horetski* Richard L. Burton
 Agency: Department of Public Safety Date: 2/18/92

B

I. JOSE COMMITTEE REPOI

5/6
Judiciary
Finance

(7)
Date Referred: February 24, 1992

FURTHER REFERRALS:

Date of Committee Action: 5/5/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 554

HOUSE BILL NO. 554

CRIMINAL LAW: CONSPIRACY, MURDER, ETC.

"An Act relating to murder, kidnapping, controlled substances, and imitation controlled substances offenses; creating the crime of conspiracy and the crime of money laundering; amending a provision relating to general principles of criminal liability."

RECOMMENDATIONS:

be replaced with CS HB 554 (HES) [] the same title [] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact Corrections

[] fiscal note(s) Admin 2/24/92 | Admin 2/24/92

[] zero fiscal note

[] zero fiscal note(s) LAW 2/24/92 | Public Safety 2/24/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Cheri Davis	-	Betty Davis			X
J. G. Songabe	✓				
Mary Miller	✓	RAY / CARNEY			✓

CHAIRMAN'S SIGNATURE

AN OVERVIEW OF HB 554 AND 555—THE GOVERNOR'S CRIME BILLS

HB 554 will provide important tools in the war against drugs.

The bill

creates a new crime of conspiracy for murder, kidnapping and felony drug offenses. Conspiracy has been a useful tool in the federal war on drugs and it could prove effective in Alaska, as well. (Sections 1 and 2)

creates a new crime targeting small drug rings, by making it a class A felony to be involved in three or more drug offenses committed with two or more other people under your direction. In other words, this makes it a crime to be the leader of a three-person drug ring. Much of the drug activity in Alaska is conducted by these small rings. Existing law only deals with larger drug rings involving five or more drug offenses committed with five or more additional people. Creating this lesser offense will give the state greater flexibility in dealing with small drug rings. (Section 3)

provides increased penalties in cases of large amounts of drugs. The bill raises the penalty for sale of cocaine (and related offenses) from a class B to a class A felony offense when the quantity exceeds 500 grams (over one pound). It also makes it a class A felony to deliver five grams (about 40 dosage units) or more of "crack." (Section 3) The bill also raises the penalty for sale of marijuana (and related offenses) from a class C to a class B felony offense when the quantity exceeds 10 kilograms (over 20 pounds). (Section 4) These types of quantity-specific offenses are used successfully in federal prosecutions.

creates a new crime of money laundering, making it a felony to deal with money known to be derived from drug violations. This hits drug traffickers where it hurts—in the pocketbook. If drug dealers cannot find anyone who will take their money, because of the risk of criminal prosecution and forfeiture of assets, their enterprises will become far less profitable and less desirable. (Section 5)

prohibits possession of drugs by consumption, by defining "possession" ~~for~~ so that a person who has ingested drugs is subject to prosecution to the same extent as those who are found with drugs in their pockets, cars or at their house. This will have the effect of reversing a court of appeals decision, which held that a person cannot be prosecuted for "possession by consumption." As the Legislative Affairs Agency has noted, "it seems illogical to punish a person possessing a drug for personal use before it is used, but not to punish that person when he or she has just used it." *Legislative Affairs Agency Report to the Seventeenth State Legislature (October 1991)*. (Section 6)

Wednesday
8:30 a.m.
Home HESS (Room 106)

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Administration

Title: 'An Act relating to murder . . . creating the crime of conspiracy.'

BRU: Public Defender Agency

Sponsor: _____

Component: Public Defender Agency

Requestor: _____

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	129.0	132.9	136.9	141.0	145.2	149.6
TRAVEL	5.0	5.2	5.4	5.6	5.8	6.0
CONTRACTUAL	13.5	13.9	14.3	14.7	15.1	15.5
SUPPLIES	2.0	2.1	2.2	2.3	2.4	2.5
EQUIPMENT	3.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	152.5	154.1	158.8	163.6	168.5	173.6

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	152.5	154.1	158.8	163.6	168.5	173.6
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	152.5	154.1	158.8	163.6	168.5	173.6

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 See attached.

Prepared by: John B. Salemi, Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: January 31, 1992

Approved by Commissioner: Nancy Bear Usara
 Agency: Administration

Date: 2/14/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Public Defender
FN 152.5 Admin.

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HB 554
2-24-92

FISCAL ANALYSIS - LAW LOG 92-0039

TITLE: "An Act relating to murder ... creating the crime of conspiracy."

This document is not intended as an analysis of the proposed legislation. It only discusses the fiscal impact passage of this bill would have on the Public Defender Agency.

Sections 1 and 2 - These sections create the new crime of conspiracy wherein two or more people involved in a homicide, kidnapping or felony drug offense are subject to prosecution separately under conspiracy theory. A conspiracy statute considerably broadens the pool of prospective criminal defendants as concerns a criminal enterprise. Typically conspiracy charges involve, from a defense perspective, considerable pretrial motion work, pretrial hearings and ultimately a lengthy trial. In most instances where individuals are charged in a conspiracy the Public Defender Agency will only represent one alleged co-conspirator. Because of conflict of interest other individuals charged will be referred to the Office of Public Advocacy. Based on testimony before certain legislative committees it is anticipated that law enforcement and the prosecution will make significant use of a new conspiracy law. While there have been no figures provided from the Department of Law regarding conspiracy case projections this agency anticipates some impact on its caseload and a significant impact on the amount of work an attorney would invest in a conspiracy case.

Section 3 - This section allows the Department of Law to charge individuals in a "continuing criminal enterprise" using a lesser number of offenses than is currently prescribed by current law. Furthermore the number of individuals involved under the new proposal is also set at a lower threshold number. The law is apparently directed toward individuals involved in small drug distribution schemes. The Department of Law concedes that "creating this lesser offense when fewer people and transactions are involved will give the state greater flexibility in small drug rings." The end result will be the making of more cases.

The impact such a change in the law will have on the Public Defender Agency is similar to that described above as relates to conspiracy. Both of these changes in the law will increase the number of cases in that a new crime is being added to the books and a current criminal description is being given wider application. In order to meet the additional workload the Public Defender Agency requests one attorney with felony level experience and one paralegal to undertake representation of clients who would be charged under these new statutes. As most conspiracy cases will emanate from urban areas the attorney would likely be sited in Anchorage. Some travel might be involved to handle conspiracy-type cases in other locations in the state. A contractual budget is also being requested in that these cases will be litigated in Superior Court.

Section 4. This section, along with certain parts of Section 3 above, restructures certain of the drug offenses in terms of the potential penalty. Certain offenses are given a higher sanction. Fiscal impact is unknown.

Section 5. This section establishes a new crime which can best be described as "money laundering". It is unknown to what extent the Department of Law will rely upon this new offense to make cases. Fiscal impact unknown.

Section 6. This section of the bill permits prosecution of individuals for "internal possession of drugs". Depending upon the policy of the Department of Law this proposal could have a tremendous impact on the Public Defender Agency. A significant percentage of individuals on felony probation are required to undergo drug screening through urinalysis. Sadly, many of them "come up dirty" (test positively for the presence of controlled substances in their blood/urine). If each of these were prosecuted as new felony crimes caseloads, especially in urban areas, would significantly rise. Defending these cases would be very expensive in that hearings would have to be conducted challenging the accuracy of the test results, the methodology, the scientific theory underlying drug screens etc. Trials would not be uncommon in that many of these individuals would have prior felony convictions and thus would be facing mandatory prison terms. When the stakes get higher more trials are likely.

In summary this bill will undoubtedly have some fiscal impact on the Public Defender Agency. Depending on the approach taken by the Department of Law the impact could be dramatic. In that the Public Defender Agency is already operating above maximum capacity in terms of its caseload any further increase in its workload must be accompanied by additional resources.

BUDGET ANALYSIS

100: Attorney III (Anchorage)	76.7	
Paralegal II (Anchorage)	52.3	
		129.0
200: Travel		5.0
300: Contractual (Office space experts, communications)		13.5
400: Supplies		2.0
500: Equipment (one-time)		<u>3.0</u>
		152.5

Position Title Attorney III		No. of Positions 1	Range / Step 22/A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location ECA		Election District 7
TYPE OF EXPENDITURE		Amount		
Salary	55,969			
Benefits	20,733			
Premium Pay				
Other				
Total Personal Services	76,702	76,702		
Travel		5,000		
Contractual		10,000		
Commodities		1,000		
Equipment		1,500		
Other				
Total Cost		94,202		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.E. Match	1007			
General Fund	1004	94,202		
IA Receipts	1007			
CIP Receipts	1061			
Other				
		Justification		
		The new crime of conspiracy, changes in the law concerning "continuing criminal enterprise" and internal possession of drug cases will, at the very least create additional cases in the urban areas of the state. The one felony level attorney and paralegal requested to meet these increases is considered a conservative fiscal response to this criminal justice reform bill.		

**Request For
New Position**

AGENCY Department of Administration
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY _____

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2-24-92

Position Title Paralegal Assistant II		No. of Positions 1	Range / Step 16/A	Barg. Unit CCU
Time Status PFT	Staff Months 12.0	Location EBA		Election District 7
TYPE OF EXPENDITURE		Amount		
Salary	36,930			
Benefits	15,326			
Premium Pay				
Other				
Total Personal Services	52,257	52,257		
Travel		-0-		
Contractual		3,500		
Commodities		1,000		
Equipment		1,500		
Other				
Total Cost		58,257		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	58,257		
LA Receipts	1007			
CR Receipts	1061			
Other				

Justification

The new crime of conspiracy, changes in the law concerning "continuing criminal enterprise" and internal possession of drug cases will, at the very least create additional cases in the urban areas of the state. The on. felony level attorney and paralegal requested to meet these increases in considered a conservative fiscal response to this criminal justice reform bill.

**Request For
New Position**

AGENCY Department of Administration

IRU Public Defender Agency

COMPONENT Public Defender Agency

FY _____

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Revised Date: _____

2-24-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

NO. _____
Bill Version: HB 554
(H) Publish Date: 2-24-92

Revision Date: _____

Department Affected: Administration

Title: "An Act relating to murder, . . . creating the crime of conspiracy . . ."

BRU: Office of Public Advocacy

Sponsor: Governor

Component: Office of Public Advocacy

Requestor: Rules Committee

COMPONENT SERIAL NO.

		4	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	123.7	128.6	133.7	139.0	144.6	150.4
TRAVEL						
CONTRACTUAL	381.1	391.1	406.7	423.0	439.9	457.5
SUPPLIES	2.0	2.1	2.2	2.3	2.4	2.5
EQUIPMENT	11.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	517.8	521.8	542.6	564.3	586.9	610.4

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	517.8	521.8	542.6	564.3	586.9	610.4
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	517.8	521.8	542.6	564.3	586.9	610.4

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None.

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: Brant McGee, Public Advocacy
Division: Office of Public Advocacy

Phone: 274-1684
Date: January 21, 1992

Approved by Commissioner: Nancy Bear Ustera
Agency: Administration

Date: 1/27/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Public Advocacy
FN 517.8 Admin

FISCAL NOTE

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STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. 554

ANALYSIS: (continued)

This omnibus criminal justice reform bill, requested by the Department of Law, creates several new offenses whose prosecution will have a dramatic fiscal impact on the Office of Public Advocacy. The following analysis will deal solely with the fiscal ramifications of the adoption of the individual sections of the proposed bill.

Sections 1 and 2 create a new crime on "conspiracy" under which two or more people involved in a homicide, kidnapping, or felony drug offense would be prosecutable for this separate crime. The purpose of the bill is to create another crime under which persons not currently prosecutable can be prosecuted. Further, and most importantly from the fiscal perspective of this agency, these new defendants will be tried together in a single trial. Such a charge will inevitably give rise to conflicts of interests among defendants which mandate the legal representation of each defendant by a single attorney per agency.

The Office of Public Advocacy (OPA) is responsible for providing representation for those with whom the Alaska Public Defender Agency has a conflict of interest. The great majority of defendants prosecuted under conspiracy laws will be found by the court to be indigent and qualified for Public Defender and OPA services. By definition, because the statute is designed to prosecute two or more people, the Office of Public Advocacy will be responsible for providing representation to one or more alleged co-conspirators in the great majority of the cases prosecuted under this new section. For example, if the Alaska Public Defender Agency is appointed to represent defendant number one in a conspiracy case, OPA will be appointed to provide representation, probably by a staff attorney, to defendant number two, and through contract counsel, to all other codefendants in a particular case.

Section 3 of the proposed bill is also intended to allow for the prosecution of multiple codefendants. This section will make it easier for the Department of Law to charge individuals engaging in a "continuing criminal enterprise" by lowering the number of offenses and the number of the individuals involved from that now specified in current law. The Department of Law states, "Creating this lesser offense when fewer people and transactions are involved will give the State greater flexibility in small drug rings." This new law will, in addition to the conspiracy law described above, allow prosecutors to make more criminal charges against more defendants who are alleged to be involved in a particular series of events. In short, on the same facts the Department of Law will be able to charge more people with more crimes.

Most drug rings are "small." Drug dealers typically know only those from whom they purchase the drugs and to whom they sell the drugs. For example, the street dealer does not know the importer. Because this law only involves the requirement that a defendant engage with two or more people, rather than the five individuals specified in current law, the facts from which the Department of Law can prosecute for a "continuing criminal enterprise" will arise more frequently.

The same fiscal analysis provided in relation to the new conspiracy law applies with equal force to this new crime. Cases filed under conspiracy statutes at the federal level and in other states routinely involve substantial attorney time, particularly for the preparation of pretrial motions. Due to the fact that the Department of Law investigation activity will probably focus on urban areas, the Office of Public Advocacy is requesting one experienced attorney and legal secretary in Anchorage to handle representation of clients charged under the bill. Because the staff attorney can represent but one codefendant in a given case, the Office of Public Advocacy must contract with private counsel for the representation of all other codefendants determined to be indigent to the court.

It is anticipated that the complexity of this litigation will dictate high contract costs, which are estimated at \$15,000 per defendant. The Department of Law has not estimated the number of prosecutions it will initiate during FY 93 or subsequent years under either the new conspiracy statute or new continuing criminal enterprise statute. The projected \$375,000 in contract costs is thus based on the assumption that the Office of Public Advocacy will only be responsible for 25 codefendants charged under these statutes for which it cannot provide staff representation during the coming fiscal year.

It should be noted that conspiracy prosecutions are far more expensive to defend than to prosecute. The nature of the allegation means that two, and usually more, defendants—each represented by separate counsel—will be prosecuted by one or two Assistant District Attorneys. For example, in a typical conspiracy prosecution, the Department of Law and the Public Defender Agency will each be paying for one attorney, while the Office of Public Advocacy will be responsible for providing counsel to all of the remaining codefendants.

The latter portion of Section 3 and Section 4 reclassify certain drug offenses to the next higher category of offenses, thus making the defendants eligible for higher penalties. While the higher penalties may influence the defendant's decision to insist upon a jury trial, it is not possible to quantify the extent

FISCAL NOTE

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STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. 554

to which such a trend would impose additional costs on this agency.

Section 5 creates the new crime of "money laundering" and makes it a felony to take, give, transport, or conduct a financial transaction involving money for other property known to be derived from the drug violations. The section is drafted with extraordinarily broad language and could be used to prosecute the spouses and children of drug dealers, as well as anyone who provides a service or sells an item to a known drug dealer. Given the broad sweep of the language of this section, the number of people prosecuted under it will depend upon policy determinations of the Department of Law that have not yet been announced.

Section 6 of the bill redefines the crime of possession of drugs in an apparent effort to allow prosecution of persons who ingest drugs within their body. Whether this will result in additional new felony cases in which OPA will be obliged to provide defense services will also depend on policy determinations by the Department of Law. It is now quite common for individuals on felony probation to be subjected to petitions to revoke their probation based on the positive results of a drug test. Typically, the filing of such petitions to revoke probation do not also involve prosecution for possession of drugs. If the Department of Law chose to prosecute such cases as new crimes, the impact on caseloads could be quite dramatic. However, without knowing the extent to which probation violators and others might be subjected to new prosecutions for possession, it is not possible to accurately estimate the fiscal impact of this provision of OPA.

Sections 7 and 8 could have no conceivable fiscal impact on the operations of the Office of Public Advocacy.

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage-ERA		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		61.0		
Benefits		22.6		
Premium Pay				
Other				
Total Personal Services		86.6		
Travel				
Contractual		3.4		
Commodities		1.0		
Equipment		3.6		
Other				
Total Cost		94.6		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004		94.6		
I-A Receipts 1007				
CIP Receipts 1061				
Other				
Justification The Anchorage Office of Public Advocacy presently has four attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside the Anchorage area as staff coverage and travel is more cost effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these four attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.				

/02209.wp/1

Request For New Position

AGENCY ADMINISTRATION
 BRU Office of Public Advocacy
 COMPONENT Office of Public Advocacy

FY 93

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 Revised Date:

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554

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10/A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Anchorage-EIJA		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		25.1		
Benefits		12.0		
Premium Pay				
Other				
Total Personal Services		37.1		
Travel				
Contractual (Office Space)		2.7		
Commodities		1.0		
Equipment		7.4		
Other				
Total Cost		48.2		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004		48.2		
I-A Receipts 1007				
CIP Receipts 1061				
Other				
Justification The Anchorage Office of Public Advocacy presently has three legal secretary positions providing clerical support, 15 professional positions, six VISTA volunteers, and the VGAL program. The addition of an attorney with a full caseload necessitates the addition of another secretary. The clerical workload generated by an additional attorney cannot be absorbed by the current clerical staff.				

6/1/02209.wp/2

Request For New Position

AGENCY ADMINISTRATION

IRU Office of Public Advocacy

COMPONENT Office of Public Advocacy

FY 93

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Revised Date:

K3554

Schleuss & McComas

ATTORNEYS AT LAW
500 L STREET, SUITE 300
ANCHORAGE, ALASKA 99501

(907) 258-7807

FAX (907) 276-1158

May 1, 1992

Representative Georgianna Lincoln
Co-Chairman Health, Education and Social
Services Committee
House of Representative
Alaska State Legislature
State Capitol, Room 112
Juneau, Alaska 99801-1182

Representative Pat Carney
Co-Chairman Health, Education and Social
Services Committee
House of Representatives
State Capitol, Room 104
Juneau, Alaska 99801-1182

RE: House Bill 554 and 555

Dear Representatives Carney and Lincoln:

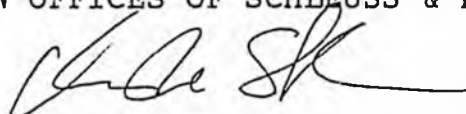
I am writing on behalf of the Alaska Action Trust. We strongly oppose HB 554 and 555, Governor Hickel's first and second crime bills. We believe the bills are detrimental to the well being of the people of this state and should not be adopted by the legislature. On behalf of the Trust it is my request that you kindly consider and distribute to all members of your committee the enclosed Position Papers prepared by the Criminal Section of the Alaska Action Trust.

In addition, the Trust requests that these two bills be scheduled for additional hearings in front of the Committee and that a member of the Trust be given an opportunity to testify in detail regarding the Trust's positions on the bills.

Thank you for considering the matters raised in this letter. I would much appreciate it if a member of one of your staffs could contact me at the above number to arrange a time for a member of the Trust to testify. Thank you for your consideration.

Sincerely yours,

LAW OFFICES OF SCHLEUSS & MCCOMAS



Christine S. Schleuss



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 L Street, Suite 104 • Anchorage
(907) 258-4040

POSITION PAPER

HOUSE BILL NO. 554

(Governor Hickel's Crime Bill No. 1)

The Alaska Action Trust strongly opposes House Bill No. 554 and urges that it not be adopted by the legislature.

SECTION 1: This Section creates a new state conspiracy crime applicable to murder offenses, kidnapping offenses, and all felony drug offenses. Alaska should not adopt a conspiracy law. It is unneeded. Present law enables the state to prosecute those who help individuals commit crimes (accomplice liability), those who attempt to commit crimes (attempt liability), and those who seek to have others commit crimes (solicitation). Every act which should be subject to criminal prosecution can effectively be prosecuted under the accomplice, attempt, and solicitation statutes. See AS 11.31.110(a), AS 11.31.110(2)(b). Under these statutes, law enforcement offices already have the tools available to them to intervene in ongoing criminal activity, stop it, and prosecute it even if the target crime has not been completed. These act as a very effective punishment against group criminal activity.

There can be absolutely no doubt that adding the crime of conspiracy will greatly increase the number of individuals being prosecuted and will inevitably increase the costs of prosecution and defense. Conspiracy investigations, and inevitably, conspiracy trials, are much more time-consuming and more complicated than trials on the underlying offenses. It is wrong to claim that conspiracy charges will consolidate into a single trial a number of drug charges. Under the Bruton decision anytime any defendant gives a statement to the police, that defendant's trial must be severed from the other pending trials. That rule will not change because of a conspiracy law, because statements to police and other individuals not part of the conspiracy are not within the co-conspirators exception to the hearsay rule. Thus, they would not be admissible at any joint trial. For example, the Gustafson/Cheely cases ongoing in Federal Court will not be tried as a single consolidated case. Each defendant who gave a statement to the police will likely have his or her case severed from the others.

Under the changes to Criminal Rules 12 and 16, and to Evidence Rule 404(b), the legislature has already made provision to join together as many charges and cases against a particular defendant as is constitutionally permitted. No further consolidation of charges or co-defendants will be accomplished by a conspiracy law. Instead, all trials will become far more expensive, because they will be far longer and more complicated.

Moreover, the proposed conspiracy language will include defendants who should not appropriately be prosecuted for crimes. For example, under the proposed law, if two nineteen year olds agreed to purchase some marijuana, and one of them made a telephone call to someone he thought might sell him some marijuana, but no one answered the phone, the crime would be a completed felony drug conspiracy. This minor conduct, where society is not harmed, should not be criminally prosecuted. Instead, the law should remain as it is, and a person must engage in a "substantial step" toward commission of an offense before he can be prosecuted for attempting to commit the offense.

Unfortunately, conspiracy laws are often cruelly used to prosecute family members of individuals suspected of drug offenses. The prosecution can then very effectively pressure the family to cause some individuals to plead guilty in exchange for dismissing charges against other family members. Alaska should not allow its laws to be so turned against innocent family members. The fact that some members of the family may be suspected drug dealers is no justification for destroying the lives of innocent family members by accusing them of being part of some fabricated conspiracy.

SECTION 2: This Section implements Section 1. Because Section 1 should be rejected, this Section should also be rejected.

SECTION 3: The proposed increases in penalties for various cocaine and "crack" cocaine offenses are unnecessary. The

one proposal arguably justified is the increase in penalty for manufacture, delivery, or possession with intention to delivery 500 or more grams of cocaine. Increasing the penalty for possession of over a pound of cocaine from a Class B felony to a Class A felony, may be appropriate because this would focus on punishing major cocaine dealers.

The proposed changes making it a Class A felony to manufacture, deliver, or possess with intent to deliver five grams of "crack" cocaine should be rejected. Other than to unfairly target minorities and poor people, there is no justification for making it a Class A felony to deliver five grams of "crack" cocaine at the same time that delivery of cocaine only becomes a Class A felony when the amount involved is 500 grams. Those who sell small amounts of "crack" cocaine are most likely addicts themselves selling small amounts of drugs to pay for their drug habits. For these individuals, convicted of their first felony drug offense, efforts to rehabilitate them should be of greater focus than efforts to isolate them. Implementation of this proposed Section will cause substantial, absolutely unnecessary and counterproductive overcrowding of Alaska's prison system.

Recently the Minnesota Supreme Court ruled unconstitutional on equal protection grounds a statute which equated 3 grams of "crack" cocaine with ten grams of regular cocaine. The court ruled that this disparate treatment violated equal protection. The court recognized that the statute had an unfair impact on minori-

ties. In Minnesota 97% of the defendants charged with possession of "crack" cocaine are black, whereas 80% of those charged with possession of regular cocaine are white. The court held that there was no justification for this disparate treatment which would inevitably have an unfair racial impact. State v. Russell, ___ N.W.2d ___ (Minn. 1991).

Certainly sale of "crack" cocaine is very serious. However, 5 grams of "crack" cocaine is little more than an individual might use personally and as noted, is likely the amount that an addict would sell to support his own habit. First offenders possessing this small amount should not be given mandatory sentences, but should be allowed the potential for rehabilitative sentence available when the offense is prosecuted as a Class B felony.

The same is true of efforts to lessen the elements for proof of continuing criminal enterprise so that all that would now be required are three or more drug offenses where the defendant acted in concert with at least two other people. This section would make defendants involved in minor drug sales, most likely those addicted to drugs, who are selling small amounts to support their personal consumption, guilty of Class A felonies. Again, this conduct, while certainly deserving of felony punishment, should not be subject to the harsh presumptive penalties reserved for the most serious offenders under the penalty provisions allocated for those who commit Class A felonies.

In addition to unnecessarily increasing the penalties for offenders who should still be considered potential subjects for rehabilitation, these sections will result in tremendous expense for the state. Because the penalties are so great, inevitably defendants will be unwilling to plead guilty to the charges but will fight them. There will be more trials, longer trials, and much more vigorous defenses.

SECTION 4: Possession with intent to deliver marijuana should remain a Class C felony. Given the studies that show that marijuana has a less harmful effect on society than other drugs, its possession should certainly be a felony, but it should remain a Class C felony and not a Class B felony.

SECTION 5: This Section creates the crime of money laundering and makes it a felony to receive, acquire, or conduct any transaction involving proceeds which an individual knows come from drug violations. (Knowledge includes awareness of a substantial probability that a fact exists. AS 11.81.900(a)(2))

This proposal contains very broad language that likely will not survive a constitutional due process challenge. It is very poorly drafted. The broad criminal liability imposed by this statute will make it much less likely that private attorneys will be willing to represent an individual charged with the crime because of the risk that funds allocated for attorney's fees will be confiscated and the risk that the attorney might also be criminally prosecuted. The result will be that the defense of a

large number of cases presently being handled by the private bar will be thrown on public agencies. The inevitable expense to the state of paying for these increased defenses will be enormous.

In addition, as was noted above in connection with the potential abuse of conspiracy laws, law enforcement has frequently, cruelly and unfairly, used money laundering statutes to prosecute innocent family members whose only act was to assist a family member in obtaining representation by taking funds to an attorney to pay for the representation.

In addition to being used against family members, attorneys, and other defense experts who are paid as part of a defense team for someone who retains private counsel, this law will also impose criminal liability on other individuals, such as bankers, if there is a "substantial probability" that the money came from an illegal source. Anyone who accepts money as part of his day-to-day business transactions will be at risk of prosecution, and the risk of prosecution is unfair and unnecessary.

SECTION 6: This bill overrules State v. Thronson, 809 P.2d 941 (Alaska App. 1991). An apparent misreading of the actual holding of the Thronson decision may be what has caused the Governor to propose this Section and caused other similar proposed amendments to the law defining possession of drugs. Thronson was charged with possession of cocaine in his body because he tested positive for cocaine during a urine test. The court ruled that a defendant could not be convicted for possession of cocaine in his

body on grounds that a person who has cocaine in his body has no control over the cocaine and could not meet the legal definition of possession. The court also explained that Thronson could have been convicted for possession of cocaine at the time he actually ingested the cocaine which caused him to have the positive urinalysis. However, mistakenly the state did not charge him with that offense.

Thus, as it stands, an individual can be charged with possession of cocaine at the time that he ingested the cocaine. A subsequent urine test would certainly be admissible evidence of guilt. Therefore, the proposed changes should be rejected as unnecessary. They will be used to prosecute poor people and minorities, those who most often take drugs when not in the privacy of their own homes.

In addition, this bill will discourage anyone who has used a controlled substance and needs medical attention from obtaining medical help. A person will be afraid that the medical attention will result in a drug test and in a criminal prosecution. The same will be true of anyone suffering from a drug addiction who might have sought treatment. Such treatment almost always includes urinalysis. A person will not seek the treatment he needs when he knows the treatment will include tests which could result in a criminally prosecution. The Trust is aware of no other state with a broad "internal possession" drug law like that proposed here.

Implementing this offense will result in a host of new criminal prosecutions. Everytime someone on probation tests positive for drugs, a new criminal charge will be brought against him. These individuals are already subject to a probation revocation proceeding and can be summarily returned to jail if that is necessary to protect the public. Sometimes it is more appropriate to continue with more intensive treatment, which is a far less expensive remedy and can sometimes effectively result in the person being rehabilitated into a non-criminal. A new criminal charge will only result in tremendous overcrowding of jails, more expense to the state, and virtually no deterrent to drugusers. The only deterrent will be to those who might otherwise seek help for their drug problems.

SECTION 7: The Alaska Action Trust has no position on the amendments proposed in Section 7.

SECTIONS 8: The Alaska Action Trust has no position on the amendments proposed in Sections 8.

SECTIONS 9 THROUGH 17: The Alaska Action Trust vigorously opposes these sections. They create new provisions for wiretapping and bugging of private communications. The practical effect of these sections is to allow the secret listening and recording of the conversations of a "target" with anyone with whom a "target" communicates, even though that person is completely innocent and unconnected with any illegal doings. Everyone in this state will be subject to having their privacy invaded and recorded,

even when he or she no idea that his or her friend, associate, or acquaintance is a "target". The bill will also allow the state to break into private premises, including homes and offices, as often as they need to, to install and remove bugging equipment. Alaska has been proud of and has traditionally protected the constitutional guaranty of all Alaskans to their right to privacy. These proposed sections would violate the Alaska constitutional right to privacy. It would violate the ruling of Glass v. State, 583 P.2d 872, r'hq 596 P.2d 10 (Alaska 1978), as follows:

Alaska's Constitution mandates that its people be free from invasions of privacy by means of surreptitious monitoring of conversations.

This proposal is a bad idea and should be rejected.