

SB343

SENATE FINANCE COMMITTEE REPORT

DATE: 3/19/92

FURTHER:

DATE TURNED INTO OFFICE: 5-4-92

The Finance Committee considered SENATE BILL NO. 343

"An Act relating to the crime of conspiracy."

and recommends:

- replace with _____ CS _____ (FINANCE)
- or adopt previous CS SB 343 (Final)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

DOA-OPA

DOA-PD

fiscal notes DPS - 1/27/92

Courts 1289 3/8/92

appropriation--no fiscal note

DO PASS:

Dirk Schultz

OTHER RECOMMENDATIONS:

As you can see No Rec
Agree with No Rec
Let Adams - DO NOT PASS

Rich Gehring (No Rec)

1. _____
Co-Chair: Signature/Recommendation

2. Do not pass without
Co-Chair: Signature/Recommendation fiscal notes

FISCAL NOTE

No. 1

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: SB 343

(S) Publish Date: 3-19-92

Revision Date: February 24, 1992
Title: "An Act relating to the crime of conspiracy."
Sponsor: Senator Halford
Requestor: Senate Judiciary Committee

Department Affected: Department of Law
BRJ: Prosecution
Component: All

COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91

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:						
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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.) The 2/20/92 Judiciary Committee work draft for SB 343, reduces the bill's score to "heinous offenses", which the work draft defines as offenses against a person under AS 11.41, punishable as an unclassified or class A felony, and offenses involving controlled substances under AS 11.71 punishable as an unclassified or class A felony. Consequently, the department's fiscal note impact will continue to be zero.

Prepared by: Richard I. Peques, Director
Division: Administrative Services

Phone: 465-3672
Date: February 24, 1992

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Date: February 24, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor

Changes in CS SB 343 (JUD) affected Agency(ies).

Rev 10/07/91

reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

Page 1 of 1

3/18/92
date Comte Aide (initial)

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: SB 343

(S) Publish Date: 3-19-92

Revision Date: 3/3/92

Department Affected: Department of Corrections

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

BRU: Statewide Operations

Sponsor: Senator Halford

Component: Various

Requestor: Senate Judiciary

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	164.3	164.3	164.3	164.3	164.3	164.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	164.3	164.3	164.3	164.3	164.3	164.3

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	164.3	164.3	164.3	164.3	164.3	164.3
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	164.3	164.3	164.3	164.3	164.3	164.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

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

Changes in CSSB 343 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.
3/18/92 PC
date Comte Aide (initial)

Prepared By: Diane Schenker, Legislative Liaison Phone: 465-3376

Division: Office of the Commissioner Date: 03/04/92

Approved by Commissioner: Lloyd Hames, Commissioner

Agency: Department of Corrections Date: 03/03/92

CONTINUATION OF FISCAL ANALYSIS

BILL: SB 343 (2/27/92 Work Draft, Judiciary Committee) "An Act relating to the crime of conspiracy."

The bill would make it illegal to conspire to commit certain heinous crimes: Heinous crimes are defined as unclassified and class A felonies against the person under AS 11.41, or crimes involving controlled substances under AS 11.71 which are punishable as unclassified, class A, or class B felonies. Conspiracy would be the same class of offense as the most serious offense that was an object of the conspiracy.

Data on the numbers of cases and average sentences for conspiracy convictions is not available to the Department of Corrections since this has not been a crime in Alaska in the past. However, based on information from the Department of Law, Criminal Division, it appears likely that the conspiracy statute would enable more effective prosecution of drug crimes in particular. Since conspiracies to commit murder, kidnapping, or other serious violent crimes occur rarely and erratically, the impact on the Department is unpredictable.

Assumption: The greatest impact of a conspiracy statute would involve drug-related crimes:

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 offenses, rather than increasing sentence length. In 1991 there were 104 offenders incarcerated whose most serious charge was an unclassified (2), class A (8), or class B (94) Misconduct Involving Controlled Substances (MICS) offense. If this bill results in a ten percent increase in convictions for drug offenses, about ten (10) additional cases will be added per year. Since 90% of the relevant MICS offenses are class B felonies, the mean sentence length for a MICS B felony is used to calculate additional bed-days. (Mean sentence length is 20.1 months. Subtracting one third of the sentence for statutory good time results in time served of slightly over one year.) Ten additional offenders serving one additional year would result in 3,650 additional bed-days per year.

If these offenders can be placed in community residential beds at an average cost of about \$45 per day, the cost would be \$164,250 per year in additional contract bed costs. (If these offenders cannot be placed in community residential center beds, it is possible that other offenders will be displaced to the community residential center beds, with the same fiscal impact.)

CONTINUATION OF FISCAL ANALYSIS
2/27/92 Work Draft (Judiciary) SB 343

The estimated costs are based on contractual community residential beds since it is not possible to predict when the increases in incarceration would actually require adding new prison beds to the current correctional system. Using the daily cost of a prison bed (about \$96.00 per day) for each additional bed-day would not accurately reflect budget increases, since the cost of each existing prison bed is already reflected in the Department's budget.

The current prison beds are full. The current prison population forecast predicts little or no growth, absent changes in legislation such as those addressed in this bill. If this bill results in any substantial increase in convictions and prison sentences for offenses other than the ten percent increase in drug offenses described above, or if sufficient numbers of offenders cannot be diverted to community residential contract beds, then the effect of this bill will be to accelerate the pace at which the Department moves toward new prison construction, including additional staff positions and other operating costs.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 343

Revision Date: _____ Department Affected: Public Safety
 Title: An act relating to the crime BRU: Alaska State Troopers
of conspiracy. Component: Criminal Investigation Bureau
 Sponsor: Halford, Collins, Pearce
 Requestor: Senator Halford 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 fiscal impact anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 1/24/92
 Approved by Commissioner: *George H. ...* for Richard L. Burton
 Agency: Department of Public Safety Date: 1/27/92

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

02/10/92 (JUC)

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. CS SB 343 (Judiciary)

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the crime of BRU: Trial Courts
conspiracy Components: _____
 Sponsor: Halford
 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	128.9	128.9	128.9	128.9	128.9	128.9
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	128.9	128.9	128.9	128.9	128.9	128.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	128.9	128.9	128.9	128.9	128.9	128.9
FEDERAL FUNDS						
OTHER						
TOTAL	128.9	128.9	128.9	128.9	128.9	128.9

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	3.0	3.0	3.0	3.0	3.0	3.0
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 *[Signature]* Phone: 264-8228
 Division: Alaska Court System Date: 03/03/92
 Approved by: Arthur H. Snowden, II, Administrative Director *[Signature]*
 Agency: Alaska Court System Date: 03/03/92

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

CSSB 343 (JUD)

This bill creates a new crime of conspiracy to promote or facilitate a heinous offense. Its 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 this legislation. When similar legislation was considered in 1987, the department projected a need for two additional attorneys, a paralegal, and a secretary, indicating a potentially large caseload. OPA has estimated that it will defend 25 co-defendants charged as a result of this legislation, in addition to those co-defendants represented by the Public Defender. Most of these co-defendants will be entitled to separate trials. Experience in other states and at the federal level demonstrates that conspiracy cases generally require extensive pre-trial motion work, and are more likely to go to trial than other felony cases.

Alaska Court System

Fiscal Analysis

CS SB 343 (Judiciary)

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge Anchorage, 12 months	\$24,150	\$19,431	\$43,581
Pro Tem Superior Court Judge Fairbanks, 6 months	12,251	9,734	21,985
Pro Tem Superior Court Judge Juneau, 6 months	12,075	9,716	21,791
In-Court Clerk, Anchorage	29,316	12,247	41,563
			<u>\$128,920</u>

F I S C A L N O T E

REQUEST:

Revision Date: 5-4-92 Affected Agency: Administration
 Title: An Act relating to BRU: Office of Public
the crime of conspiracy. Advocacy
 Sponsor: Senator Halford Components: Office of Public
 Requestor: Senate Finance Committee Advocacy

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	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (THOUSANDS OF DOLLARS)

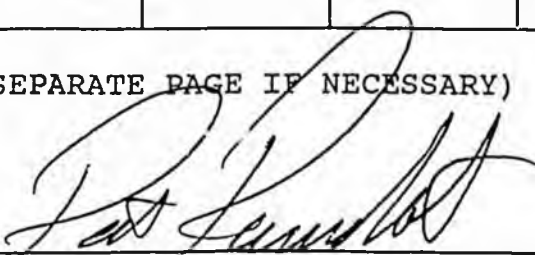
General Fund						
Federal Fund						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Prepared By:


 Senator Pat Pourchot, Co-chairman
 Senate Finance Committee

Date:

Phone: 465-3879

DISTRIBUTION (BY PREPARER)
 LEGISLATIVE FINANCE
 LEGISLATIVE SPONSOR

REQUESTOR
 OFFICE OF MANAGEMENT AND BUDGET
 AGENCY (IES)

FISCAL NOTE

REQUEST:

Revision Date: 5-4-92 Affected Agency: Administration
 Title: An Act relating BRU: Public Defender Agency
to the crime of conspiracy.
 Sponsor: Senator Halford Components: Public Defender Agency
 Requestor: Senate Finance Committee

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	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (THOUSANDS OF DOLLARS)

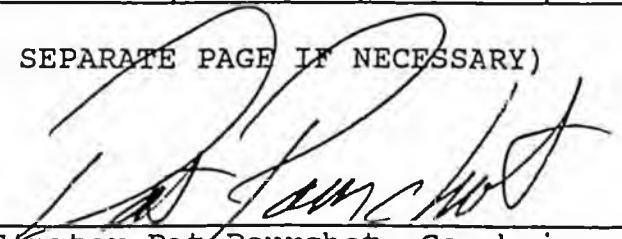
General Fund						
Federal Fund						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Prepared By:


 Senator Pat Pourchot, Co-chairman
 Senate Finance Committee

Date:

5/5/92
 Phone: 465-3879

DISTRIBUTION (BY PREPARER)
 LEGISLATIVE FINANCE
 LEGISLATIVE SPONSOR

REQUESTOR
 OFFICE OF MANAGEMENT AND BUDGET
 AGENCY(IES)

CS FOR SENATE BILL NO. 343 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/19/92
Referred: Finance

Sponsor(s): SENATORS HALFORD, Collins, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of conspiracy."

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

3 * Section 1. AS 11.31 is amended by adding new sections to read:

4 Sec. 11.31.120. CONSPIRACY. (a) An offender commits the crime of conspiracy if,
5 with the intent to promote or facilitate a serious felony offense, the offender agrees with one or
6 more persons to engage in or cause the performance of that activity and the offender or one of
7 the persons does an overt act in furtherance of the conspiracy.

8 (b) If an offender commits the crime of conspiracy and knows that a person with whom
9 the offender conspires to commit a serious felony offense has conspired or will conspire with
10 another person or persons to commit the same serious felony offense, the offender is guilty of
11 conspiring with that other person or persons to commit that crime whether or not the offender
12 knows their identities.

13 (c) In a prosecution under this section, it is not a defense

14 (1) that the defendant belongs to a class of persons who by definition are legally

1 incapable in an individual capacity of committing the crime that is the object of the conspiracy;
2 or

3 (2) that a person with whom the defendant conspires could not be guilty of the
4 crime that is the object of the conspiracy because of

5 (A) lack of criminal responsibility or other legal incapacity or exemption;

6 (B) unawareness of the criminal nature of the conduct in question or of
7 the criminal purpose of the defendant; or

8 (C) any other factor precluding the culpable mental state required for the
9 commission of the crime.

10 (d) If the offense that the conspiracy is intended to promote or facilitate is actually
11 committed, a defendant may not be convicted of conspiring to commit that offense with another
12 person for whose conduct the defendant is not legally accountable under AS 11.16.120(b).

13 (e) In a prosecution under this section, it is an affirmative defense that the defendant,
14 under circumstances manifesting a voluntary and complete renunciation of the defendant's
15 criminal intent, either (1) gave timely warning to law enforcement authorities; or (2) otherwise
16 made proper effort that prevented the commission of the crime that was the object of the
17 conspiracy. Renunciation by one conspirator does not affect the liability of another conspirator
18 who does not join in the renunciation.

19 (f) Conspiracy is a

20 (1) unclassified felony if the object of the conspiracy is murder in the first degree;

21 (2) class A felony if the object of the conspiracy is a crime punishable as an
22 unclassified felony other than murder in the first degree;

23 (3) class B felony if the object of the conspiracy is a crime punishable as a class
24 A felony;

25 (4) class C felony if the object of the conspiracy is a crime punishable as a class
26 B felony.

27 (g) In this section, "serious felony offense" means an offense

28 (1) against the person under AS 11.41, punishable as an unclassified or class A
29 felony; or

30 (2) involving controlled substances under AS 11.71, punishable as an unclassified,
31 class A, or class B felony.

1 * Sec. 2. AS 11.31.140(a) is amended to read:

2 (a) It is not a defense to a prosecution under AS 11.31.100 - 11.31.120 [AS 11.31.100
3 OR AS 11.31.110] that the crime the defendant attempted to commit, solicited to commit, or
4 conspired to commit [THAT IS THE OBJECT OF THE ATTEMPT OR SOLICITATION] was
5 actually committed pursuant to the attempt, solicitation, or conspiracy [OR SOLICITATION].

6 * Sec. 3. AS 11.31.140(b) is amended to read:

7 (b) A person may not be convicted of more than one crime defined by AS 11.31.100 -
8 11.31.120 [AS 11.31.100 OR AS 11.31.110] for conduct designed to commit or culminate in
9 commission of the same crime.

10 * Sec. 4. AS 11.31.140(d) is amended to read:

11 (d) This section does not bar inclusion of multiple counts in a single indictment or
12 information charging commission of a crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100
13 OR 11.31.110] and commission of the crime that is the object of the attempt, conspiracy, or
14 solicitation.

15 * Sec. 5. AS 12.55.125(v) is amended to read:

16 (b) A defendant convicted of murder in the second degree, attempted murder in the first
17 degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving
18 a controlled substance in the first degree shall be sentenced to a definite term of imprisonment
19 of at least five years but not more than 99 years.

0-1187-1-2000

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 343

Revision Date: _____ Department Affected: Department of Law
Title: "An Act relating to the crime of Conspiracy." BRU: Prosecution
Component: All

Sponsor: Senator Halford
Requestor: Senate Judiciary Committee

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. Peques, Director Phone: 465-3672
 Division: Administrative Services Date: February 13, 1992
 Approved by Commissioner: Richard I. Peques / For
Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 13, 1992

249.02
5(2nd)

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 343

This bill creates a crime of conspiracy when two or more people agree to commit a criminal offense and one of them does some act in furtherance of the agreement. The bill extends the application of the conspiracy law to specific crimes: certain felony offenses under Title 11 (criminal code) and Title 4 (alcoholic beverages).

The Department of Law believes there will not be a significant increase in the number of cases due to the conspiracy law. Current law permits prosecution of those who directly commit crimes, as well as those who are accomplices (AS 11.16). Because our present accomplice law allows us to prosecute people who aid and abet a criminal, is it unlikely that the conspiracy law (which requires proof of an agreement to commit the crime) will result in any more cases being prosecuted. Instead, the crime of conspiracy will be added as another count in a case that would have been prosecuted anyway.

In those cases that cannot be charged under current law, the crime of conspiracy will permit some additional cases to be prosecuted and some fiscal impact could result, although there may be offsetting cost savings.

The major effect of the 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.

Naturally the effects of any new law cannot be predicted with precise certainty. However, conspiracy laws and stiff drug penalties are nothing new in the rest of the country. United States Attorney Wev Shea and Anchorage District Attorney Ed McNally, himself a former federal drug prosecutor, have experience in dealing with these laws, and in their experience caseloads are not increased, but the government's case does get stronger and there are efficiencies from joint trials.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. S.B. 343

Revision Date: _____ Department Affected: Department of Corrections
 Title: "An Act relating to the crime of conspiracy." BRU: Statewide Operations
 Component: Various
 Sponsor: Senator Halford
 Requestor: Senate Judiciary 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	197.1	197.1	197.1	197.1	197.1	197.1
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	197.1	197.1	197.1	197.1	197.1	197.1
CAPITAL						
REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	197.1	197.1	197.1	197.1	197.1	197.1
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	197.1	197.1	197.1	197.1	197.1	197.1

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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: Office of the Commissioner Date: 02/25/92
 Approved by Commissioner: Lloyd Hames, Commissioner
 Agency: Department of Corrections Date: 02/25/92

CONTINUATION OF FISCAL ANALYSIS

BILL: SB 343 "An Act relating to the crime of conspiracy."

The bill would make it illegal to conspire to commit certain crimes.

Data on the numbers of cases and average sentences for conspiracy convictions is not available from the Department of Corrections since this has not been a crime in Alaska in the past. However, based on information from the Department of Law, Criminal Division, it appears likely that the conspiracy statute would enable more effective prosecution of drug crimes in particular. Since conspiracies to commit murder, kidnapping, or other serious violent crimes occur rarely and erratically, the impact on the Department is unpredictable.

Assumption: The greatest impact of a conspiracy statute would be on drug-related crimes:

In 1991, there were 104 inmates incarcerated for unclassified, Class A, and Class B offenses for Misconduct Involving a Controlled Substance (MICS). 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 offenses, rather than increasing sentence length. In 1991 there were 104 offenders incarcerated whose most serious charge was an unclassified (2), Class A (8), or Class B (94) MICS offense. If this bill results in a ten percent increase in convictions for drug offenses, about ten (10) additional cases will be added per year. Since the greatest number of offenses are Class B, it is assumed the ten additional convictions would result in sentences of about 20.1 months (the mean sentence length for Class B MICS offenses.) With the deduction for statutory good time, this would result in ten offenders serving about 12 months each, or 12 bed-years, or 4,830 bed-days. If these offenders can be placed in community residential beds at an average cost of about \$45.00 per day, the cost would be \$197,100.00 per year in additional contract bed costs. (If these offenders cannot be placed in community residential center beds, it is possible that other offenders will be displaced to the community residential center beds, with the same fiscal impact.)

The estimated costs are based on contractual community residential beds since it is not possible to predict when the increases in incarceration would actually require adding new prison beds to the current correctional system. Using the daily cost of a prison bed (about \$96.00 per day) for each additional bed-day would not accurately reflect budget increases, since the cost of each existing prison bed is already reflected in the Department's budget.

CONTINUATION OF FISCAL ANALYSIS-- SB 343

The current prison beds are full. The current prison population forecast predicts little or no growth, absent changes in legislation such as those addressed in this bill. If this bill results in any substantial increase in convictions and prison sentences for offenses other than the ten percent increase in drug offenses described above, or if sufficient numbers of offenders cannot be diverted to community residential contract beds, then the effect of this bill will be to accelerate the pace at which the Department moves toward new prison construction, including additional staff positions and other operating costs.

FISCAL NOTE

No. 2

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: SB 343

(S) Publish Date: 3-19-92

Revision Date: _____

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

Department Affected: Administration

BRU: Public Defender Agency

Component: Public Defender Agency

Sponsor: Senator Halford

Requestor: Senate Judiciary

COMPONENT SERIAL NO.

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

OPERATING	FY 93	FY 94	FY 95	FY 95	FY 97	FY 98
PERSONAL SERVICES	360.9	371.7	382.9	394.4	406.2	418.4
TRAVEL	15.0	15.5	16.0	16.5	17.0	17.5
CONTRACTUAL	30.0	31.0	32.0	33.0	34.0	35.0
SUPPLIES	4.0	4.1	4.2	4.3	4.4	4.5
EQUIPMENT	6.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	415.9	422.3	435.1	448.2	461.6	475.4

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	415.9	422.3	435.1	448.2	461.6	475.4
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	415.9	422.3	435.1	448.2	461.6	475.4

POSITIONS:

FULL-TIME	6.0	6.0	6.0	6.0	6.0	6.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

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

Changes in CS SB 343 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

3/18/92 R
date Comte Aide (initial)

Prepared by: John B. Salemi, Public Defender

Division: Public Defender Agency

Phone: 279-7541

Date: January 27, 1992

Approved by Commissioner: Nancy Bear Usara

Agency: Administration

Date: 1/28/92

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

ANALYSIS: (continued)

Title: "An Act related to the crime of conspiracy."

This bill creates a new crime of conspiracy if a person with the intent to promote or facilitate an illegal activity agrees to engage in or cause the performance of that activity and that person or one of the persons does an overt act in furtherance of the conspiracy. Illegal activity is defined to include all felony crimes against persons, all felony crimes against public administration and order, all felony crimes involving alcoholic beverages under AS 04 and unclassified, felony A and felony B drug offense and felony A and felony B property offenses. In short, the crimes included are numerous. The only crimes where there could not be a conspiracy would be misdemeanors and C felony level property and drug offenses. Each conspiracy crime would be punished as a one step lower crime than the object crime of the conspiracy.

The net effect of this bill is to enormously increase the potential pool of defendants by not only covering a broad range of crimes, but also by making criminal a broader range of conduct. Under current accomplice liability statutes there must be "substantial step towards the commission of the target offense." Under conspiracy there is no requirement that it progress past "an overt act." Therefore, multiple co-defendants will be generated even when a completed crime or a substantial step toward a completed crime is absent. The conspiracy statute penalizes speech and any overt act however preliminary in nature.

The scope of enforcement authority is expanded to include anyone only peripherally involved. There will be a larger and more complicated investigation and the net of prosecution will spread wider. Because such a law expands the persons who might be charged in any given crime, it also expands the pool of persons who might legitimately claim fifth amendment privileges. Additionally, multiple defendant trials, whether handled in a single trial or in numerous separate trials are extremely time consuming. The Public Defender Agency must assume that it will be appointed in a large number of conspiracy prosecutions just as it is currently appointed in a large number of all of the underlying types of object crimes. It must be assumed that numerous prosecutions will be pursued under this statute because of the current frequency of arrests for the substantive offenses involved.

Investigation in defense of conspiracy cases is extremely time consuming and labor intensive. Cases filed in conspiracy statutes on the federal level and in other states routinely involve substantial attorney time, particularly for preparation of pre-trial motions. The greater impact will more probably lie with the Office of Public Advocacy. The Public Defender Agency will only be permitted, due to legal conflict of interest rules, to represent a single conspirator. The Office of Public Advocacy, through its staff attorneys will be able to represent a single conspirator. The remaining co-conspirators will have to be represented by independent counsel hired under contract by the Office of Public Advocacy.

Due to the incredible breadth of the substantive target crimes of this conspiracy statute and due to the fact that the Department of Law's investigative activity will probably focus on more urban areas, the Public Defender Agency is requesting one experienced attorney, an investigator, and a clerk typist to handle representation of clients in its two largest urban areas. These attorneys and staff will be stationed in Anchorage and Fairbanks, but will represent clients charged with conspiracy on a statewide basis.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 343

BUDGET ANALYSIS - SB 343

100:	Attorney IV (Anchorage)	86.6	
	Attorney IV (Fairbanks)	98.2	
	Investigator II (Anchorage)	52.3	
	Investigator II (Fairbanks)	54.2	
	Clerk Typist III (Anchorage)	34.2	
	Clerk Typist III (Fairbanks)	35.4	
			360.9
200:	Travel (Attorneys, Investigators, Experts, Witnesses)		15.0
300:	Contractual (Office Space, Experts, Communications)		30.0
400:	Supplies (Office and law library)		4.0
500:	Equipment (one time)		<u>6.0</u>
	Total		415.9

Position Title Attorney IV		No. of Positions 2	Range / Step 24/A	Org. Unit PX	
Time Status PFT	Staff Months 24.0	Location Anchorage and Fairbanks		Election District 20-7	
TYPE OF EXPENDITURE		AMOUNT			
Salary	137.7	Justification SB 343 These senior felony attorneys will be stationed, one in Anchorage and one in Fairbanks. The Anchorage attorney will represent clients in the First and Third Judicial Districts while the Fairbanks attorney will cover the Second and Fourth Judicial Districts.			
Benefits	47.2				
Premium Pay					
Other					
Total Personal Services	184.9				184.9
Travel					10.0
Contractual					19.0
Commodities					2.0
Equipment					3.0
Other					
Total Cost		218.9			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004	218.9			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

8/LEG92/02716.kp/4

Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 93

Page 4 of 6
Revised Date: _____

Position Title Investigator II		No. of Positions 2	Range / Step 16/A	Barg Unit CCU	
Time Status PFT	Staff Months 24.0	Location Anchorage and Fairbanks		Election District 20-7	
TYPE OF EXPENDITURE		AMOUNT			
Salary	75.3	Justification SB 343 These investigators will be based in Anchorage and Fairbanks but will provide services throughout the entire state.			
Benefits	31.1				
Premium Pay					
Other					
Total Personal Services	106.4				106.4
Travel					5.0
Contractual					7.0
Commodities					1.0
Equipment					1.5
Other					
Total Cost		120.9			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
C.F. Match	1003				
General Fund	1001	120.9			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

8/LEG92/02716.kp/5

**Request For
New Position**

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 93

Page 5 of 6
Revised Date: _____

Position Title Clerk Typist III		No. of Positions 2	Range / Step 8/B	Org. Unit CGU	
Time Status PFT	Staff Months 21.0	Location Anchorage and Fairbanks		Election District 2-17	
TYPE OF EXPENDITURE		AMOUNT			
Salary	46.8	Justification SB 343 These two support staff positions will be based in Anchorage and Fairbanks.			
Benefits	22.9				
Premium Pay					
Other					
Total Personal Services	69.7				69.7
Travel					
Contractual					4.0
Commodities					1.0
Equipment					1.5
Other					
Total Cost		76.2			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1001	76.2			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

8/LEG92/02716.kp/6

Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 93

Page 6 of 6
Revised Date: _____

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 3

Bill Version: SB 343

(S) Publish Date: 3-19-92

Revision Date: _____

Title: "An Act relatino to the crime of conspiracy."

Sponsor: Halford, Collins, Pearce

Requestor: Senate Judiciary

Department Affected: Administration

BRU: Office of Public Advocacy

Component: Office of Public Advocacy

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						
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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.

Changes in CSB 343 (TW) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

3/18/92 ve
date Comte Aide (initial)

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

Phone: 274-1634
Date: January 24, 1992

Approved by Commissioner: Nancy Bear Usara
Agency: Administration

Date: 1/28/92

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

ANALYSIS: (continued)

This bill will create a new crime of "conspiracy" under which two or more people involved in felonies 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, this bill will dramatically increase the potential pool of defendants who will request State-funded counsel, if charged. Such a change will inevitably give rise to conflicts of interest among defendants which will mandate the legal representation of each defendant by a separate attorney or agency.

The Office of Public Advocacy (OPA) is responsible for providing representation for those with whom the Alaska Public Defender Agency (PDA) 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 PDA and OPA services. By definition, because the statute is designed to prosecute two or more people, OPA 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 PDA is appointed to represent defendant #1 in a conspiracy case, OPA will be appointed to provide representation, probably by a staff attorney, to defendant #2, and, through contract counsel, to all other co-defendants in a particular case.

Cases filed under conspiracy statutes on the federal level and in other states routinely involve substantial attorney time, particularly for the preparation of pre-trial motions. Due to the fact that the Department of Law investigation activity will probably focus on urban areas, the OPA is requesting one experienced attorney and a legal secretary in Anchorage to handle representation of clients charged under the bill. Because the staff attorney can represent but one co-defendant in a given case, the OPA must contract with private counsel for the representation of all other co-defendants determined to be indigent by the court.

It is anticipated that the complexity of this litigation will dictate high contract costs, which are estimated at \$15,000 per defendant. To our knowledge, the Department of Law has not estimated the number of prosecutions it will initiate during FY 93 or subsequent years under the new conspiracy statute. The projected \$375,000 in contract costs is thus based on the assumption that the OPA will only be responsible for 25 co-defendants 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 PDA will each be paying for one attorney, while the OPA will be responsible for providing counsel to all of the remaining co-defendants.

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage-EBA		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		64.0		
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				
<p>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.</p>				

6/1/02440.a/1

Request For New Position

AGENCY ADMINISTRATION

ORU Office of Public Advocacy

COMPONENT Office of Public Advocacy

FY 93

Page 3 of 4
Revised Date: _____

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10/A	Barg. Unit GC
Time Status PFT	Staff Months 12.0	Location Anchorage-EDA		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.				

6/1/02440.a/2

Request For New Position

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

FY 93

Page 4 of 4
 Revised Date: _____

DEPARTMENT OF LAW

CRIMINAL DIVISION

April 30, 1992

5-2-92
WALTER J. HICKEL, GOVERNOR

3FC-92
REPLY TO: Adams Amend

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

The Honorable Al Adams
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: Proposed venue amendment to CSSB 343 (Jud)

Dear Senator Adams:

This is in response to a request by your staff, and to questions posed by you during Judiciary Committee hearings, that I suggest language to amend SB 343 so as to establish that venue in criminal conspiracy cases is not based on the location of an overt act committed in furtherance of the conspiracy.

You commented during the Judiciary Committee hearings that you believed that courts often set venue in conspiracy cases in the location where one of the overt acts occurred. You were concerned that a rural resident in Barrow, who enters into a conspiracy there but who commits an overt act in Anchorage, might have to be tried before an urban jury.

I have not researched the question of how other courts establish venue in criminal cases. If you wish to guarantee that venue will not be based on the location of overt acts, that should be done statutorily. I do not believe that such a provision will diminish the effectiveness of this legislation.

Under AS 22.10.030, venue in Alaska is established by court rule. To meet your concerns, it would be possible to add, on page two of the draft dated 3/19/92, a new subsection (h) to AS 11.31.120, to read:

(h) Notwithstanding AS 22.10.030, venue in actions in which the crime of conspiracy is alleged to have been committed may not be based solely on the location of overt acts done in furtherance of the conspiracy.

This language would preclude the courts from basing venue decisions solely on the location of overt acts. Instead, the courts could set venue based on the place where the conspirators

The Honorable Al Adams
Alaska State Senate

April 30, 1992
Page 2

entered into the criminal agreement, the place where the target offense was attempted or committed, where other related crimes may have been committed, or any other factors the court determines to be appropriate. Under this proposed amendment, if criminal agreements or other crimes committed by the conspirators take place in different judicial districts, or if there are other grounds that would support venue in more than one district, the courts would not be prohibited from taking into account where overt acts were committed in deciding among possible locations for venue, as long as that was not the sole basis for setting venue.

I would be happy to discuss this further with you or your staff at your convenience.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Dean J. Guaneli
Dean J. Guaneli
Assistant Attorney General &
Criminal Division Administrator

DJG:jf

cc: The Honorable Rick Halford
Alaska State Senate

AMENDMENT

OFFERED IN THE SENATE
TO: CSSB 343 (JUDICIARY)

BY SENATOR POURCHOT

PAGE 2, AFTER LINE 31:

INSERT A NEW SUBSECTION (H) TO AS 11.31.120, TO READ:

(H) NOTWITHSTANDING AS 22.10.030, VENUE IN ACTIONS IN WHICH THE CRIME OF CONSPIRACY IS ALLEGED TO HAVE BEEN COMMITTED MAY NOT BE BASED SOLELY ON THE LOCATION OF OVERT ACTS DONE IN FURTHERANCE OF THE CONSPIRACY.

Alaska State Legislature

Sen. Rick Halford, *Chair*
Sen. Pat Rodey, *Vice-Chair*
Sen. Al Adams, *Member*
Sen. Virginia Collins, *Member*
Sen. Steve Frank, *Member*

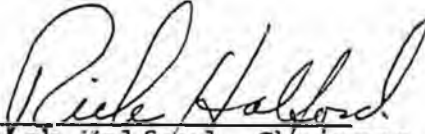


Senate Judiciary Committee

Letter Of Intent

The Senate Judiciary Committee does not support the fiscal notes from the Public Defender Agency and the Office of Public Advocacy relating to Judiciary Committee Substitute for Senate Bill 343.

It has been the experience of the federal prosecutor that when an individual is faced with being prosecuted for committing a crime, in addition to also being prosecuted with conspiracy to commit that crime, the individual is more motivated to plead his case and therefore adjudicate more swiftly. This is consistent with the fiscal note from the Department of Law.


Rick Halford, *Chairman*
Senate Judiciary Committee

BILL NO: CSSB 343(JUD)

DATE: April 29, 1992

TITLE: "An Act relating to
the crime of conspiracy"

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

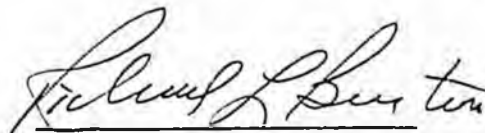
CSSB 343(JUD) creates the new crime of "conspiracy". An offender commits this crime if:

1. with intent to commit a "serious felony offense",
2. the offender agrees with one or more others to commit the offense, and
3. the offender or one of the others performs an overt act in furtherance of the conspiracy.

The offenses for which a conspiracy prosecution could be brought are listed in section 1, proposed AS 11.31.120(g), page 2, lines 27-31, and include unclassified or class A felonies against a person and unclassified, class A, or class B felonies involving controlled substances.

The Department of Public Safety supports CSSB 343(JUD). Adoption of this bill will provide Alaska law enforcement officers and prosecutors with a valuable tool which is available to law enforcement in the federal system and in most other states. If sufficient evidence of the conspiracy is obtained, charges may be filed and arrests made before the conspirators actually commit the underlying planned serious felony offense.

I urge the Legislature's prompt and favorable consideration of this bill.



Richard L. Burton
Commissioner

Alaska State Legislature

Senate

Office of The Majority Leader

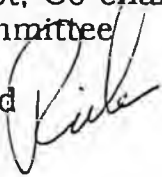
Official Business

Rick Halford
P.O. Box V
State Capitol
Juneau, Alaska 99811
Phone (907) 465-4958

P. O. Box 190
Chugiak, Alaska 99567
(907) 694-4958

MEMORANDUM

TO: Senator Pat Pourchot, Co-chair
Senate Finance Committee

FROM: Senator Rick Halford 

DATE: March 19, 1992

SUBJECT: Scheduling of SB 343 -- "An act relating to the crime of
conspiracy."

Senate Bill 343 has passed out of the Judiciary Committee and is now in the Finance Committee. Please schedule this bill for a hearing at your earliest convenience.

When enacted, this legislation will provide our law enforcement officers and prosecutors with a valuable tool that will allow for the prosecution of a crime before the actual crime is committed. Thus, charges may be filed and arrests made once sufficient evidence is obtained. This bill will also be pivotal in our fight against drugs as it will enable our state to prosecute entire drug organizations rather than just the pushers.

Thank you for your consideration in scheduling this bill.

FRANK H. MURKOWSKI
ALASKA

COMMITTEES:

SELECT COMMITTEE ON INTELLIGENCE (VICE CHAIRMAN)
ENERGY AND NATURAL RESOURCES
FOREIGN RELATIONS
VETERANS' AFFAIRS
SELECT COMMITTEE ON INDIAN AFFAIRS

United States Senate

WASHINGTON, DC 205 10-0707
(202) 274 8965

February 28, 1991

The Honorable Rick Halford
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Halford:

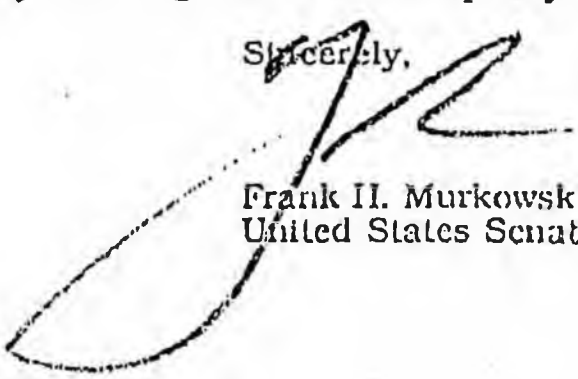
When I had the opportunity to speak before the State Legislature earlier this month, I expressed my deep concern about the escalation of drug activity in Alaska. We must recognize that the weakness of our state's drug laws sends an unfortunate message to those who would traffic in illegal drugs. I applaud your efforts to address this problem by introducing legislation calling for a state conspiracy law. The passage of such a law should dispel any notion drug organizations may have that Alaska is a safe haven for their illicit operations.

It is time to give law enforcement in Alaska the tools necessary to break the criminal organizations that prey on our youth. Your legislation is an important step toward achieving that goal. The enactment of a state conspiracy law would allow us to bring down entire drug organizations rather than just prosecuting the pushers who are easily replaced.

We cannot simply rely upon the federal criminal justice system to deal with the rise of criminal organizations in Alaska. While federal conspiracy laws play a significant role in combatting criminal organizations, we must give the state's law enforcement community the ability to use effectively their valuable resources to stem the tide of drugs washing up on Alaska's shores. We must make every effort to ensure that state and local law enforcement can take the steps necessary to adequately protect our youth and our communities.

I am hopeful that the Legislature will act quickly to provide for this protection by enacting a criminal conspiracy statute.

Sincerely,


Frank H. Murkowski
United States Senator

277 WEST 2TH AVENUE, D
ANCHORAGE, AK 99513 7
(907) 271 3735

101 1ST AVENUE, BUS
FAIRBANKS, AK 99701-6
(907) 456-0233

P.O. BOX 21647
JUNEAU, AK 99802-16
(907) 580-7400

130 TRADING BAY ROAD, SUITE
KINCAID, AK 99811 771
(907) 203 5000

109 MAIN STREET
KETCHIKAN, AK 99901 64
(907) 225 6000

Alaska Association Chiefs of Police



February 21, 1992

Senator Rick Halford
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Halford.

On behalf of the Alaska Association of Chiefs of Police, I would like to offer our support of Senate Bill 343, an act relating to conspiracy. For many years, law enforcement has asked that the legislature pass such a law.

We believe that a conspiracy law is an effective way to combat crime. Most states have conspiracy laws, as does the federal government. Alaska also needs such laws, and we urge the passage of Senate Bill 343.

If we can be of any assistance, please contact me at 786-8552.

Sincerely,

A handwritten signature in cursive script that reads "Duane S. Udland".

Duane S. Udland, President
Alaska Association of Chiefs of Police
4501 South Bragaw
Anchorage, Alaska 99507

COPY

FBI National Academy Associates

Alaska Chapter



February 20, 1992

269-5641

Senator Rick Halford
Alaska State Legislature
Box V
Juneau, AK 99811

Dear Senator Halford:

The FBI National Academy Associates, Alaska Chapter strongly support SB 343, creating the new crime conspiracy.

This bill will significantly increase efficiency of the criminal justice system within Alaska and provide a valuable and essential tool to all law enforcement within Alaska.

Federal conspiracy laws assist State and local law enforcement, however it is imperative that Alaska enact it's own conspiracy statute in order that State prosecutors can prosecute criminal organizations.

Once again, Senator, we wholeheartedly support your efforts towards passage of SB 343 (an act relating to the crime of conspiracy).

Sincerely,

Colonel John R. Murphy
President

FBINAA
Officers &
Executive Board

President
John R. Murphy, 136th
5700 Tudor Road
Anchorage, Alaska 99507
(907) 740-5641

Secretary
Ted R. Carlson, 121st
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Eagle River, Alaska 99577
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John T. McConaughy, 120th, Past President
Glenn Flotha, 152nd, Vice President, South Central
Michael A. Nielson, 118th, Vice President, Northern
Dan Anslinger, 144th, Vice President, Southeast

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE TROOPERS

WALTER J. HICKEL, GOVERNOR

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5700 EAST TUDOR ROAD
ANCHORAGE, ALASKA 99507
PHONE: (907)

269-5641

February 20, 1992

Senator Rick Halford
Alaska State Legislature
Box V
Juneau, AK 99811

Dear Senator Halford:

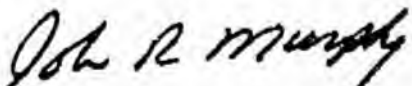
I, Director of the Alaska State Troopers heartily support SB 343, creating the new crime conspiracy.

This bill will significantly increase efficiency of the criminal justice system within Alaska and provide a valuable and essential tool to all law enforcement within Alaska.

Federal conspiracy laws assist State and local law enforcement, however it is imperative that Alaska enact it's own conspiracy statute in order that State prosecutors can prosecute criminal organizations.

I wholeheartedly support your efforts towards passage of SB 343 (an act relating to the crime of conspiracy).

Sincerely,


Colonel John R. Murphy
Director

cc: Commissioner Burton

Post-It™ brand fax transmittal memo 7871		# of pages > 2
To <i>Sen. Halford</i>	From <i>Col. Murphy</i>	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	<i>465-3825</i>



U. S. Department of Justice

United States Attorney

District of Alaska at Anchorage

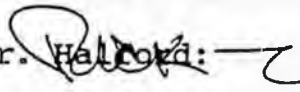
February 18, 1992

Federal Building & U.S. Courthouse
222 West 7th Avenue, #9, Room 253
Anchorage, Alaska 99513-7567

FTS-868-5071
Commercial: (907) 271-5071
Fax Number: (907) 271-3223

The Honorable Rick Halford
State Senate
Alaska State Legislature

Re: State Conspiracy Laws
Violent Crime, Drugs, Guns and Fraud
Law Enforcement Coordinating Committee

Dear Mr. ~~Halford~~: 

It is important that the Legislature enact conspiracy laws to address violent crime, drugs, guns and fraud. This is an area of criminal law that has been neglected by the State for too long. Organized crime in Alaska must be adequately addressed.

Enclosed for your review is my article that was published in "The Anchorage Times" this past Saturday. The article sets forth my position on the need for State conspiracy laws.

It is vitally important for the welfare of the citizens of this State and local law enforcement that conspiracy laws are enacted this session. The laws should adequately address Alaska's growing organized complex criminal element.

Please do not hesitate to contact me if I may be of assistance. I will be happy to meet with you. Your assistance and support is greatly appreciated by law enforcement and all concerned Alaska citizens.

Best Wishes.

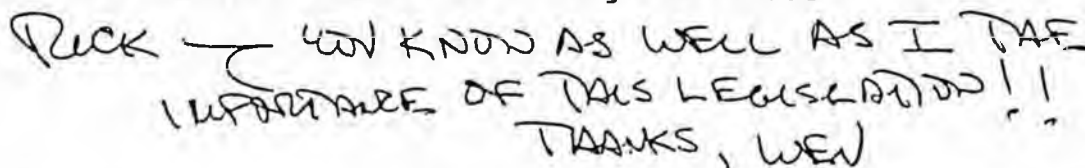
Yours Very Truly,


WEVLEY WILLIAM SHEA
United States Attorney

WWS:kjm

Enclosure

cc: Chuck Farmer, Coordinator
Law Enforcement Coordinating Committee


Rick - you know as well as I the
importance of this legislation!!
Thanks, WWS

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

April 29, 1992

SUBJECT: Sectional Analysis of CSSB 343 (Judiciary)
(Work Order No. 7-LS1705\P)

TO: Senator Rick Halford

FROM: Robert Glennon Casey
Legislative Counsel

RGC
4-29-92

I. INTRODUCTION

You have asked for a sectional analysis of CSSB 343 (Judiciary). This memorandum analyzes the version bearing work order no. 7-LS1705\P.

II. SUMMARY

Major points of this conspiracy bill include (1) a narrow range of intended crimes for which conspiracy would be criminalized, (2) a requirement that a conspirator commit an overt act in furtherance of the conspiracy, (3) exemption from conspiracy liability in cases where the contemplated crime is actually committed and by its very nature requires the participation of two or more people, (4) a defense of renunciation, and (5) stepped-down classification of the crime.

III. DISCUSSION

Section 1 of the bill would establish, in subsection (a), the crime of conspiracy as an agreement between two or more persons to engage in or cause a "serious felony offense," followed by an overt act by one of the persons. The overt act would be something done in furtherance of the serious felony offense.

Subsection (b) of Section 1 would clarify that a conspirator would remain liable for conspiracy even though the conspirator was not individually capable of being liable for the serious felony offense contemplated by the conspiracy. This is sometimes the case where one conspirator holds a license to engage in some activity but agrees with an unlicensed person to help the unlicensed person also engage in that activity.

Subsection (c) of Section 1 would also clarify that legal incapacity of a co-conspirator would not relieve the other conspirator from liability for the conspiracy. Thus if a sane person contracted with a legally insane person to have the insane person carry out a murder, the sane person could not use the other person's insanity as a defense to the conspiracy charge. This subsection would also clarify that inability of a conspirator to be liable for the serious felony offense would not prevent the conspirator from being liable for conspiracy.

Subsection (d) of Section 1 would prevent liability for conspiracy in agreements to commit crimes where the other person's participation in the crime was by definition a necessary element of the crime, so long as the serious felony offense was actually committed. This would be a modified version of the so-called "Wharton Rule."

Subsection (e) of Section 1 would provide a defense of renunciation. A person who had joined in a conspiracy could escape liability for the conspiracy by making a complete and voluntary "renunciation," if the renunciation included either giving timely warning to law enforcement officers or doing something else appropriate that actually prevented commission of the serious felony offense.

Subsection (f) of Section 1 would classify a conspiracy as a crime one level less grievous than the "serious felony offense" contemplated by the conspiracy. For example, conspiracy to commit a class B felony would be a class C felony.

Subsection (g) of Section 1 would define "serious felony offense" as either a crime under AS 11.41 ("Crimes Against the Person") punishable as an unclassified or class A felony or a crime involving controlled substances under AS 11.71, punishable as an unclassified, class A, or class B felony. Traditionally, prosecution for conspiracy has been a particularly important law enforcement weapon in enforcement of narcotics laws.

Section 2 would treat conspiracy in the same fashion as solicitation and attempt are treated under AS 11.31.140(a). Actual commission of the serious felony offense would not by itself be a defense to a charge of conspiracy.

Section 3 would also treat conspiracy the same as solicitation and attempt are treated under AS 11.31.140(b). Multiple conspiracies, attempts, solicitations, and any combination thereof to commit the same crime could only yield one conviction for conspiracy, attempt, or solicitation.

Section 4 would permit a prosecutor to charge a defendant with both conspiracy and commission of the serious felony offense. Once again, this would cause treatment of conspiracy to match treatment of attempt and solicitation under existing Alaska law.

Senator Rick Halford

April 29, 1992

Page 3

Section 5 would assign to conspiracy to commit murder in the first degree the same special sentence of confinement for five to 99 years that is assigned to attempted murder in the first degree. The theory is that conspiracy and attempt should be treated similarly in this regard.

RGC:pl

92-313.plm

Recommended State Legislation

No strategy to combat illegal drug use can ignore the crucial role played by State and local governments. Many States have already enacted much useful anti-drug legislation. States that do not adopt legislative deterrents, while neighboring jurisdictions adopt bold legislation, will become havens for drug activity. No State can afford that risk or that reputation.

The Administration urges State officials, particularly State legislators, to consult with law enforcement officials, State and local prosecutors, treatment and education officials, and others to determine what laws or modifications to existing laws are needed in their States. In November 1990, the Office of National Drug Control Policy released a White Paper entitled "State Drug Control Status Report," which contained a number of suggestions for State anti-drug legislation. The following is a brief list of provisions that should form the core of a State's anti-drug efforts.

Criminal Statutes

States should bolster their criminal codes with additional legislation tailored to the increased sophistication of today's drug trade. Among the statutes that State lawmakers should consider are the following:

Attempted Drug Crimes. Attempts to commit any drug crime should be punishable with up to the same penalty as if the offense had been completed. Such statutes permit law enforcement officers to

make drug arrests without consummating a sale or purchase with actual drugs.

Drug Paraphernalia Laws. Every State should enact a drug paraphernalia law based on the Model Drug Paraphernalia Act, originally drafted by the Drug Enforcement Administration in 1979. Such a law criminalizes the manufacture, distribution, and sale of paraphernalia intended for use with illegal drugs.

Wiretap Statutes. Some State laws governing the use of wiretaps and other electronic surveillance techniques may require dual consent, or may otherwise be outdated. These statutes should be amended to bring them into conformity with Federal law.

Conspiracy Statutes. Conspiracy statutes should be updated and expanded to enhance the ability of State officials to prosecute drug traffickers and dismantle the criminal enterprises they control. For example, the prohibition of joint trials of trafficking defendants renders impractical many State conspiracy statutes.

Money Laundering Statutes. States should enact criminal statutes to prohibit knowingly engaging in delivery, receipt, transfer, or any other transaction of funds derived from the proceeds of drug offenses. States should also pass other laws to control the activities of unregulated money exchange houses in their jurisdiction.

Precursor Chemical Control Statute. State laws should regulate the purchase of chemicals and, if appropriate, glassware and other equipment commonly used to manufacture and process drugs. Such laws are necessary to reduce the domestic production of drugs such as methamphetamine.

Maintenance, Control, and Use of Buildings. Landlords who knowingly allow their property to be used in connection with drug activity are just as responsible as the dealers themselves. States should adopt laws to punish landlords who continue to collect rents from tenants involved in the production or distribution of drugs, unless the landlord was reasonably unaware of the unlawful activity or notified the police of what was happening.

Designer Drugs. Chemists can synthesize new drugs that are almost identical to scheduled drugs but are sufficiently different that their manufacture and sale are legal. These drugs may be as dangerous as scheduled drugs. States should have emergency scheduling authority to prevent this practice and should also allow prosecution of those who engage in it.

Counterfeit Substances. Drugs produced in clandestine labs are often stamped with a legitimate company's trademark. It should be a criminal offense to misuse a trademark in this way.

OPINION

TAKING A STAND

Without conspiracy laws Alaska easy target for organized crime

Alaska is unique. Approximately 50 percent of our population resides in the Anchorage area. Much of Alaska's remaining population is isolated. This isolation and lack of a transportation infrastructure places a substantial burden on state and local law enforcement.

Crime in Alaska is complex and organized in the areas of illicit drugs, fraud, corruption and violent crime. Federal law enforcement agencies work closely with state and local agencies in combating crime. This is a federal, state and local "team approach" with communication, coordination and cooperation to attack state-wide crime.

Federal conspiracy laws assist federal law enforcement in effectively addressing criminal organizations. A conspiracy is an agreement between two or more persons to commit a crime or accomplish a legal purpose through illegal action. Alaska does not have state conspiracy laws. Virtually all other states do.

Local law enforcement is the first line of defense for crime involving drugs, guns and violence. The Alaska State Troopers and Anchorage Police Department, as well as state prosecutors, are severely restricted without state conspiracy laws. As the complexity of criminal organizations has increased, the burden placed upon state law enforcement has increased.

State prosecutors should have the basic "tools" to attack crime. It is a tremen-



Wewley William Shea

dous handicap not to have state conspiracy laws to address criminal organizations. The public should demand and have adequate protection.

Anchorage over the past few years has become a base or transshipment point for complex criminal organizations. In the last eight months, the United States Attorney for Alaska has initiated prosecution of the following criminal organizations:

• **MEXICAN MARIJUANA/COCAINE CONSPIRACY**

The Anchorage area was the site of numerous, very high quality marijuana "indoor grows." The marijuana was exported to the Lower 48 in exchange for cocaine and cash. The U.S. Attorney's Organized Crime and Drug Enforcement

State prosecutors cannot prosecute criminal organizations without conspiracy laws. Alaska's problem is complex due to the previous state 'legalization' of marijuana. Alaska is looked upon as a haven for drug traffickers.

Task Force led by the Drug Enforcement Administration and composed of federal, state and local law enforcement investigated and prosecuted the case. The conspiracy investigation involved the U.S. Attorney for the Eastern District of Washington.

• **NIGERIAN HEROIN CONSPIRACY**

Nigerian heroin traffickers established a smuggling conspiracy utilizing Anchorage International Airport as a transshipment point to the Lower 48. United States Customs has intercepted over 60 pounds of pure China-white heroin with a street value of \$1 million per pound. The heroin conspiracy operated primarily in New York, Florida and Texas. The heroin originated in Thailand and was shipped to Anchorage via Japan and the Philippines. The conspiracy investigation involved the U.S. Attorney Offices in Texas, Hawaii, Washington, New York and Florida.

• **MUSLIM CRIP'S CRACK-COCAINE CONSPIRACY**

The Muslim Crips gang of Los Angeles has attempted to make inroads in the crack cocaine distribution in Anchorage. Recently Crips were arrested in Anchorage on drug and gun charges. The investigation involved the U.S. Attorney for the Central District of California.

State prosecutors cannot prosecute criminal organizations without conspiracy laws. Alaska's problem is complex due to the previous state "legalization" of marijuana. Alaska is looked upon as a haven for drug traffickers. In addition, individuals who conspire to manufacture, transport and distribute drugs look upon Alaska as a "permissive" environment since Alaska has no conspiracy laws. Virtually all other states have conspiracy laws.

Over the past 16 years, state and local law enforcement, as well as concerned citizen organizations, such as the Anchorage Chamber of Commerce, have stressed the importance of the Alaska state Legislature enacting conspiracy laws to address criminal organizations.

However, the Legislature has failed to act or the governor has not supported the conspiracy legislation.

The U.S. Attorney's Law Enforcement Coordinating Committee comprised of federal, state and local law enforcement agencies recognizes that Alaska laws are not adequate to address the criminal organizations in Alaska. This is especially true in the area of drugs, guns and violence. More cases are prosecuted federally due to inadequate state laws.

The Federal Court System in Alaska is not adequate to handle the drastically increasing criminal element in Alaska that thrives on drugs, guns, fraud and corruption. Alaska Attorney General Charles Cole, as well as local district attorneys, support enacting adequate state conspiracy laws to address the criminal environment in Alaska.

The Anchorage Chamber of Commerce anticipates that Gov. Walter Hickel and concerned legislators will again be addressing Alaska's need for conspiracy laws. The Anchorage Chamber of Commerce urges all Alaska citizens to support the enactment of conspiracy laws necessary to address an increasing criminal element in Alaska.

Wewley William Shea is U.S. Attorney for the District of Alaska. Opinions expressed in Taking a Stand do not necessarily reflect the editorial position of The Anchorage Times.