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SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERENCE

DATE: 1/13/92

FURTHER:

Date of 5-Day Notice: 3/5/92
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: 3/18/92

Judiciary Committee considered SENATE BILL NO. 343

"An Act relating to the crime of conspiracy."

and recommends:

replace with CS SR 343 (JUD)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the Finance

do pass

do not pass

no recommendation

individual recommendations

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

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

Governor's bill with fiscal notes:

zero fiscal notes LAW 2/24/92

fiscal notes LAW 2/24/92

Admin/PD 1-28-92

Admin/CPA 1-28-92

Corrections 3-4-92

DO PASS:

OTHER RECOMMENDATIONS:

 Rick Halford do pass
 Chair: Signature and Recommendation

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.

A handwritten signature in cursive script that reads "Rick Halford".

Rick Halford, Chairman
Senate Judiciary Committee

SENATE BILL 343 FISCAL NOTES

DEPARTMENT	COST	NOTATIONS	POSITIONS
LAW *to CS	0.00	NO SIGNIF INCREASE IN CASES- INCREASE IN SENTENCES	
PUBLIC SAFETY	0.00		
PUBLIC DEFENDER	415.90	"ENORMOUS INCREASE IN NUMBER OF CASES"	6 POSITIONS
OPA	517.90	"DRAMATIC INCREASE IN THE POOL OF DEFENDANTS"	2 POSITIONS
CORRECTIONS	197.10	"THE RESULT WILL PROBABLY BE MORE OFFENDERS SENTENCED FOR DRUG OFFENSES RATHER THAN AN INCREASE IN SENTENCE LENGTH"	
COURTS *to CS	128.90	MORE CASES/LONGER TRIALS	4 POSITIONS
TOTAL	1259.80		12 POSITIONS

SB 343 and SB 444		
FISCAL NOTES		
Department	Halford FY93	Governor FY93
Public Defender	415.9	152.5
Public Safety	0	0
Public Advocacy	517.8	517.8
Corrections	197.1	525.6
Law	0	0
TOTAL FISCAL	1130.8	1195.9

Rep. Halford

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.

000 000	000 768
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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						
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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 *CSC* Phone: 264-8228
 Division: Alaska Court System Date: 03/03/92

Approved by: Arthur H. Snowden, II, Administrative Director *AHS*
 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	<u>41,563</u>
			<u><u>\$128,920</u></u>

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSSB 343 (IUD)

Revision Date: March 19, 1992

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

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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	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	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

The Senate Judiciary Committee Substitute for SB 343, further restricts application of the proposed conspiracy law to crimes against a person under AS 11.41, punishable as an unclassified or class A felony, and crimes involving controlled substances under AS 11.71, punishable as an unclassified or class A or class B felony. Because the scope of the bill has been substantially narrowed, and for the reasons previously stated in our original fiscal note of February 13, 1992, fiscal note costs should remain at zero.

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

Phone: 465-3672

Date: March 19, 1992

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

Date: March 19, 1992

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

STATE OF ALASKA
1992 LEGISLATIVE SESSION

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
BRU: 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						
---------	--	--	--	--	--	--

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

Phone: 465-3672
Date: February 24, 1992
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 [Signature]
date Con te Aide (initial)

FISCAL NOTE

2/20/92 Work DRAFT
 Judiciary Committee
 BILL NO. SB 343

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

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
 BRU: 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						
---------	--	--	--	--	--	--

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 scope 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. Pegues, 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, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

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. 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:						
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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.)

Please see the attached analysis.

Richard I. Peques

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

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.

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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.

Revision Date: _____
Title: "An Act relating to the crime of conspiracy"

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

Sponsor: Senator Hallford
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						
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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 CSSB 343 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.
2/18/92 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 Usura
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 offenses 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 a "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 the 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 IX
Time Status PFT	Staff Months 24.0	Location Anchorage and Fairbanks		Flection District 20-7
TYPE OF EXPENDITURE		AMOUNT		
Salary		137.7		
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	1001		218.9	
I-A Receipts	1007			
CIP Receipts	1061			
Other				
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.				

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 CGU			
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						
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						
G.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 24.0	Location Anchorage and Fairbanks		Election District 2-17
TYPE OF EXPENDITURE		AMOUNT		
Salary		46.8		
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	1004		76.2	
I-A Receipts	1007			
CHP Receipts	1061			
Other				
Justification SB 343 These two support staff positions will be based in Anchorage and Fairbanks.				

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: _____

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 343

Revision Date: _____

Department Affected: Administration

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

BRU: Public Defender Agency

Sponsor: Senator Halford

Component: Public Defender Agency

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 96	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						
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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.)

Prepared by: John B. Salemi, Public Defender

Phone: 279-7541

Division: Public Defender Agency

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).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 343

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 offenses 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 a "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 the 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 - SE 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	Barg. 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			
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.P. 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 CGU	
Time Status PFT	Staff Months 24.0	Location Anchorage and Fairbanks		Election District 207	
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				
G.P. Match	1003				
General Fund	1004	120.9			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

8/LECG2/02716.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	Barg. Unit GGU	
Time Status PFT	Staff Months 24.0	Location Anchorage and Fairbanks		Election District 207	
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.P. Match	1003				
General Fund	1004	76.2			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

S/LECC?/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

BILL NO. SB 343

Revision Date: _____

Department Affected: Administration

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

BRU: Office of Public Advocacy

Component: Office of Public Advocacy

Sponsor: Hallford, Collins, Pearce

Requestor: Senate Judiciary

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

3/18/92 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/DBF, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 343

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 charge 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				
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.				

6/1/02410.a/1

Request For New Position

AGENCY ADMINISTRATION
 BRU 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 CG
Time Status PFT	Staff Months 12.0	Location Anchorage-EBA		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: _____

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 343

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

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

Sponsor: Halford, Collins, Pearce
Requestor: Senate Judiciary

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	405.7	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.

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

Phone: 274-1684
Date: January 24, 1992

Approved by Commissioner: Nancy Bear Usura
Agency: Administration

Date: 1/28/92

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 343

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 charge 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				
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.				

6/1/02440.a/1

Request For New Position

AGENCY ADMINISTRATION

BRU 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 GG
Time Status PFT	Staff Months 12.0	Location Anchorage-EBA		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				
<p>Justification</p> <p>The Anchorage Office of Public Advocacy presently has three legal secretary positions providing clerical support, 15 professional positions, six VISTA volunteers, and the VGAI 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.</p>				

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: _____

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

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						

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 date rc 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

Revision Date: 3/3/92 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	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:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	164.3	164.3	164.3	164.3	154.3	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.

Prepared By: *Diane Schenker* 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 3,550 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.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
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240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 12, 1992

SUBJECT: CSSB 343 (Judiciary)

TO: Senator Rick Halford
Attention: Rick Cooke

FROM: Robert Glennon Casey
Legislative Counsel

You have asked for a discussion of the various provisions of the 3/12/92 version of the above bill.

Section 1 establishes, 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 must be something done in furtherance of the serious felony offense.

Subsection (b) of Section 1 states the traditional rule that two links of a conspiracy may sometimes be treated as one large conspiracy. Thus if Tom conspires with Dick to commit some serious felony offense and knows that Dick has or will conspire with Harry to commit the same serious felony offense, then Tom is guilty of conspiring with Harry as well as with Dick.

Subsection (c) of Section 1 clarifies that a conspirator would remain liable for conspiracy even though the conspirator would not individually have been 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 also clarifies that legal incapacity of a co-conspirator does 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 would nonetheless be liable for conspiracy.

Senator Rick Halford

March 12, 1992

Page 2

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 actually was committed.

Subsection (e) of Section 1 provides a defense of renunciation. A person who had joined in a conspiracy may escape liability for the conspiracy in circumstances manifesting complete and voluntary renunciation, if the person either gives timely warning to law enforcement officers or does something else appropriate that prevents the commission of the serious felony offense.

Subsection (f) of Section 1 classifies conspiracy to commit a serious felony offense as a crime one degree below the level of the serious felony offense itself.

Section 2 would treat conspiracy the same way 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 treat conspiracy the same way 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 liability for one conspiracy, solicitation, or attempt.

Section 4. A prosecutor would be able to charge a defendant with both conspiracy and commission of the serious felony offense. Once again, this would cause the new crime of conspiracy to be treated the way existing law treats solicitation and attempt.

RGC:pl
92-169.plm

DIVISION OF LEGAL SERVICES

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MEMORANDUM

February 27, 1992

SUBJECT: Sectional Analysis of CS SB 343 ()

TO: Senator Rick Halford
Attention: Jeff

FROM: Robert Glennon Casey
Legislative Counsel

R.G.C.
2-27-92

You have requested a sectional analysis of the above described bill. The following is an explanation of the contemplated effect of various provisions, but this should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 creates the crime of conspiracy. Subsection (a) generally defines the crime as an agreement between two or more persons to engage in or cause commission of a "heinous offense," coupled with the taking of at least one overt act by one of the conspirators toward completion of the heinous offense.

Subsection (b) provides a rule that two links of a conspiracy are sometimes to be treated as one large link. For example, if Tom conspired with Dick and knew that Dick had or would conspire with Harry, then Tom would be liable for conspiracy with Harry even though Tom and Harry did not directly communicate with each other.

Subsection (c)(1) clarifies that a person otherwise liable for conspiracy is not relieved of liability simply because the person could not himself or herself legally commit the heinous offense. For example, if Tom conspired to have a heinous offense committed by Harry, then Tom could not escape liability simply because he would himself have been legally incapable of committing the heinous offense.

Slightly changing the above example, subsection (c)(2) clarifies that Tom could also not escape liability for conspiring with Harry to cause a heinous offense simply because Harry was legally incapable of committing the heinous offense.

Subsection (d) removes liability for conspiracy from conspirators who renounce the conspiracy by following certain guidelines. Renunciation must occur under circumstances manifesting a voluntary and complete renunciation of the conspirator's

intent to cause the heinous offense. Furthermore, the renouncing conspirator must take some action that prevents commission of the heinous offense, such as giving timely warning to law enforcement officers.

Certain halfhearted renunciations, such as those made after it was clear that the police had completed an investigation and were ready to arrest all of the conspirators, would not relieve a person from liability for conspiracy.

Subsection (e) classifies conspiracy the same as the classification of the most serious heinous offense whose commission was intended by the agreement among the conspirators.

Subsection (f) defines "heinous offense." Its effect is to limit liability for conspiracy to agreements to commit unclassified and class A felonies under AS 11.41 ("Offenses Against the Person" - generally the most serious violent crimes) and unclassified, class A, and class B controlled substances violations under AS 11.71.

Section 2 provides that actual occurrence of the heinous offense does not automatically relieve a person from liability for having conspired to commit the heinous offense. This is the way that existing Alaska law treats the other two "anticipatory crimes" (attempt and solicitation). The theory behind applying this rule to conspiracy is that certain conspirators would be far removed from the scene of the heinous offense and therefore difficult to prosecute successfully for commission of the heinous offense. Under this provision, a conspirator who could not be proven to have committed the heinous offense could at least be prosecuted for conspiracy.

Section 3 clarifies that multiple attempts, solicitations, or conspiracies (or any combination of them) to cause just one heinous offense would yield liability for only one anticipatory crime. Thus if Tom and Dick conspired several times over 5 months to murder Harry, then Tom and Dick each unsuccessfully attempted the murder twice, and then one of them finally did murder Harry, there would be just one heinous offense (the murder). Since there was only one heinous offense, Tom could be successfully prosecuted for only one count of either conspiracy or attempt, rather than several counts. The same would go for Dick. (Of course, one or both of them could also be prosecuted for the murder, depending on the circumstances.)

Section 4 clarifies that a prosecutor could charge a conspirator with both conspiracy and the heinous offense. (That is already the rule in Alaska for the anticipatory

Senator Rick Halford

February 27, 1992

Page 3

crimes of attempt and solicitation.) Thus a district attorney would not be forced to pick between charging a defendant with the heinous offense or charging the defendant with conspiracy. The district attorney could try to prove both crimes at trial and let the jury could decide which crimes the defendant actually committed.

RGC:gc
92-169.glc

Alaska State Legislature

Senate District L
Al Adams

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OUT OF SESSION
P.O. Box 333
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Official Business

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Senator Al Adams ^{APA}

RE: Senate Bill 343, "An Act relating to the crime of conspiracy"

DATE: March 9, 1992

This memo proposes amendments to the aforementioned legislation. The amendments conform to the proposed committee substitute dated 2.27.92 and are presented sequentially rather than in order of importance. I will distribute this to members of the Judiciary Committee today and trust we can discuss the amendments at the committee meeting tomorrow.

These amendments are proposed to make this legislation more easily understood, add reason and fairness to the proposal, provide consistency with other statutory provisions and conform with the Model Penal Code.

Amendment #1

Page 1, line 5 delete "heinous"

Page 1, line 5, after the word "a", insert " serious felony"

Page 1, line 9, delete "heinous"

Page 1, line 9, after the word "a", insert "serious felony"

Page 1, line 10, delete "heinous"

Page 1, line 10, after the word "same", insert "serious felony"

Page 2, line 18, delete "heinous"

Page 2, line 18, after the word "section," insert " a serious felony"

Reasoning: the word "heinous" is problematic in two respects. First this word is difficult for most people to pronounce. Secondly, heinous is not a word commonly used in the English vocabulary. It is worth our efforts to place words in our statutes that are easily understood and that most people enunciate without difficulty.

Amendment #2

Page 1, line 7, after the word "conspiracy." insert: " As used in this section, an overt act is an act of such character that it manifests a purpose on the part of the actor that the object of the conspiracy should be completed."

Reasoning:

This amendment eliminates ambiguity in use of the word "overt act". It also eliminates imposing criminal liability when an "act" allegedly taken in furtherance of the conspiracy is one that does not bear a close relationship to the commission of the object offense. An example would be a person who lives in Kotzebue who is alleged to have conspired with an individual to sell drugs, and the overt act alleged is making a phone call for a place to stay in Anchorage. Although making such a phone call is an overt act, it is not necessarily of such character that it should trigger criminal liability for conspiracy.

This amendment conforms to clarifications made in other state's conspiracy laws and addresses the uncertainty noted by the Alaska Action Trust in its position paper section on the problem with of leaving "overt act" undefined.

Amendment #3

Page 2, after line 9, insert a new subsection to read: "In a prosecution under this section, it is a defense that, if the criminal objective were achieved, the defendant would not be legally accountable under AS 11.16.120 9(b) for the conduct of the person with whom the defendant conspired."

Reasoning:

This language was deleted from the original bill version.

AS 11. 16.120 (b) says, "Except as otherwise provided by a provision of law defining an offense, a person is not legally accountable for the conduct of another constituting an offense if

(1) the person is the victim of the offense; or

(2) the offense is so defined that the person's conduct is inevitably incidental to its commission."

This amendment would make our statutes conform to the Model Penal Code and to Wharton's Rule, a rule in the criminal law of conspiracy, that an agreement between two people to commit a crime cannot be prosecuted as a conspiracy when the crime necessarily requires the participation of two people. Examples of such crimes would be adultery, incest or buying and selling drugs.

For further elaboration on this amendment, I would suggest that a representative from the Department of Law discuss this rule, the adaptation of our criminal statutes to the Model Penal Code and the untoward implications of its omission from this bill.

Amendment #4

Page 2, line ¹³14 after the word "effort", delete "that prevented" and insert "to prevent".

Reasoning:

This returns to the language of the original bill.

The CS places an unreasonable burden on the defendant in that he or she must have *actually* prevented the commission of the crime in order to prove renunciation. This imposes criminal liability on a person who renounced a crime and reported a conspiracy even if law enforcement officials made a policy decision to let the offense occur or even if they were irresponsible and ignored the warning. Tying the defense of renunciation to circumstances that are completely outside the defendant's control is neither fair nor reasonable.

The original language provided the defendant the opportunity to exert efforts towards preventing the crime. The amendment does not alter other language in this section which demand that the circumstances surrounding the effort must manifest a voluntary and complete renunciation of the defendant's criminal intent.

Again, the existing language is unreasonable because not everyone has the knowledge, capacity or power to prevent a crime, no matter how much they try to do so. The defendant may not know when, how, where or by whom the conspiratorial crime was to be committed. Language on page 1 specifically notes that a conspirator does not even need to know the identities of the individuals who commit the crime. The amendment would allow the defendant to show that efforts were made to stop the crime as evidence of renunciation of the act.

Amendment #5

Page 2, delete lines 16 and 17

Page 2, after line 15, insert:

"Conspiracy is a

(1) class A felony if the object of the conspiracy is a crime punishable as an unclassified felony;

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

(3) class C felony if the object of the conspiracy is a crime punishable as a class B felony."

Reasoning:

This amendment also returns to language in the original version and provides consistency with our other similar statutes of attempt and solicitation.

AS 11.31.100 and AS 11.31.110 relating to attempt and solicitation respectively, slide the charges for those offenses one step down from the charge for the person who actually committed the crime. It makes no sense why conspiracy charges should carry the same implications as the criminal act while attempt and solicitation do not. The result without this amendment is that a person who took greater steps to complete the crime would have lower liability than a person who took fewer steps to complete the crime.

An example: a person convicted of attempted arson under an accomplice liability theory who committed a "substantial step" such as helping to fling gasoline around the building to be burned, would be guilty of a class B felony. On the other hand, a person convicted of conspiracy to commit arson who committed an "overt act" such as buying gasoline at the local gas station, would be guilty of a class A felony. This type of classification scheme is irrational.

Amendment #6

Page 2, following line 17 insert:

"If the particular conduct charged to constitute a criminal conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither the conduct nor the actor presents a public danger warranting the grading of such offense, the court shall exercise its power to enter judgement and impose sentence for a crime of a lower grade, or in extreme cases, may dismiss the prosecution."

Reasoning:

Amendment #6 is offered if Amendment #5 is not implemented. The language is taken from the Model Penal Code 5.05 relating to the grading of conspiracy charges. It allows for judicial discretion in instances where the link between the conspiratorial act and the crime are so weak that it is fundamentally unfair or unreasonable to charge the individual as though they had committed the crime themselves.

Amendment #7

Insert: "Notwithstanding any other provision of law, venue for proceedings under AS 11.31.120 is the judicial district in which the conspiracy allegedly occurred, unless a change in venue is requested by the defendant."

Reasoning:

This amendment is proposed as a cost containment measure and to protect rural residents in their rights to trial by peers. In general, a conspiracy prosecution may be brought at the place of the agreement or in any locale where an overt act by any conspirator took place.

Thus, a conspiracy that was agreed to in a rural area and that involved a crime that was to be committed in the rural area, could be charged in an urban area if even one overt act took place in an urban area.

An example: A conspiracy agreed to in Barrow involved a crime that is to be committed solely in Barrow. When one of the conspirators is in Anchorage, he makes a hotel reservation that the prosecution alleges was intended to provide other conspirators with a place to hide out in after the crime is committed. All of the Barrow conspirators could be forced by the prosecution to stand trial in Anchorage. This is unfair and unreasonable for the defendants, but because prosecutorial resources are much more substantial in Anchorage, it is easier for the police and prosecutors to prosecute there and it is difficult to find a jury pool of peers.

I can't say it any better than one of the concurring judges in the U.S. Supreme Court case Krulewitch v U.S. 440 69 S. Ct. 7165, 93 LEd. 790 (1949) said it:

The leverage of a conspiratory charge lifts [the constitutional venue] limitation from the prosecution and reduces its protection to a phantom, for the crime is considered so vagrant as to have been committed in any district where any one of the conspirators did any one of the acts, however innocent, intended to accomplish its object. The government may, and often does, compel one to defend at a great distance from any place he ever did any act because some accused confederate did some trivial and by itself innocent act in the chosen district.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSSB 343 ()

Page 1, line 5:

Delete "heinous offense"

Insert "serious felony"

Page 1, line 9:

Delete "heinous offense"

Insert "serious felony"

Page 1, line 10:

Delete "heinous offense"

Insert "serious felony"

Page 2, line 18:

Delete "heinous offense"

Insert "serious felony"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSSB 343()

Page 1, line 7, following "conspiracy.":

Insert "In this subsection, an "overt act" is an act that manifests a purpose on the part of the actor that the object of the conspiracy be completed."

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSSB 343()

Page 2, following line 9:

Insert a new subsection to read:

"(d) In a prosecution under this section, it is a defense that, if the criminal objective were achieved, the defendant would not be legally accountable under AS 11.16.120(b) for the conduct of the person with whom the defendant conspired."

Reletter the following subsections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSHB 343()

Page 2, line 13:

Delete "that prevented"

Insert "to prevent"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSHB 343()

Page 2, lines 16 - 17:

Delete all material and insert:

"(e) Conspiracy is a

(1) class A felony if the object of the conspiracy is a crime punishable as an unclassified felony;

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

(3) class C felony if the object of the conspiracy is a crime punishable as a Class B felony."

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSHB 343()

Page 2, following line 17:

Insert a new subsection to read:

"(f) If the particular conduct charged to constitute a criminal conspiracy is so inherently unlikely to result in commission of a crime that neither the conduct nor the actor presents a public danger warranting grading of the offense under (e) of this section, then upon conviction under this section the court may impose sentence for a crime of a lower classification and, in an extreme case, the court may dismiss the prosecution."

Reletter the following subsection accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSHB 343()

Page 2, following line 15:

Insert a new subsection to read:

"(e) Notwithstanding other provision of law, venue for a prosecution under this section is the judicial district in which the agreement under (a) of this section is alleged to have occurred."

Reletter the following subsection accordingly.

(1)

(d) If the criminal objective of the conspiracy is actually achieved, a defendant may not be convicted of conspiring with another person for whom the defendant is not legally accountable under AS 11.16.120(b).

property or in attempting to escape, rather than in taking property, as element of robbery, 93 ALR3d 643.

Criminal liability of third persons for death of another as result of accused's attempt to kill self or assist another's suicide, 40 ALR4th 702.

Impossibility of consummation as defense to prosecution for attempt, 41 ALR4th 588.

What constitutes attempted bank robbery under 18 USCS §§ 2113(a), making it offense to take or attempt to take, by force, violence, or intimidation, any property, money, or other thing of value from bank, 37 ALR Fed. 255.

Criminal responsibility under 18 USCS § 2(b) of one who lacks capacity to commit an offense but who causes another to do so, 52 ALR Fed. 769.

Sec. 11.31.100. Attempt. (a) A person is guilty of an attempt to commit a crime if, with intent to commit a crime, the person engages in conduct which constitutes a substantial step toward the commission of that crime.

(b) In a prosecution under this section, it is not a defense that it was factually or legally impossible to commit the crime which was the object of the attempt if the conduct engaged in by the defendant would be a crime had the circumstances been as the defendant believed them to be.

(c) In a prosecution under this section, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, prevented the commission of the attempted crime.

(d) An attempt is

(1) an unclassified felony if the crime attempted is murder in the first degree;

(2) a class A felony if the crime attempted is an unclassified felony other than murder in the first degree;

(3) a class B felony if the crime attempted is a class A felony;

(4) a class C felony if the crime attempted is a class B felony;

(5) a class A misdemeanor if the crime attempted is a class C felony;

(6) a class B misdemeanor if the crime attempted is a class A or class B misdemeanor.

(e) If the crime attempted is an unclassified crime described in a state law which is not part of this title and no provision for punishment of an attempt to commit the crime is specified, the punishment for the attempt is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the amount of the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime attempted is punishable by an indeterminate or life term, the attempt is a class A felony. (§ 2 ch 166 SLA 1978; am § 1 ch 102 SLA 1980; am § 10 ch 45 SLA 1982; am § 1 ch 59 SLA 1988)

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view and modification
 y vested in either the
 he executive branch of
 fore, the superior court
 to review its own sen-
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 an 60 days after it has
 Davenport v. State, 543
 a 1975); Szeratics v.
 3 (Alaska 1977).
 its additional proba-
 rvce of sentence. —
 rity under Alaska law
 ert, when probation is
 a a fixed sentence, re-
 nt to serve that sen-
 ce the defendant on an
 of probation following
 ence. Franzen v. State,
 ska 1978).
 oosed affirmed. — See
 477 P.2d 447 (Alaska
 . State, 548 P.2d 1298
 ite v. Trunnel, 549 P.2d
); Layland v. State, 549
 1976); Godwin v. State,
 ska 1976); Thurkill v.
 1 (Alaska 1976); Noble
 d 142 (Alaska 1976);
 ., 553 P.2d 40 (Alaska
 State, 553 P.2d 472
 orton v. State, 553 P.2d
); Schuster v. State, 553
 a 1976); Buchanan v.
 53 (Alaska 1976); Daw-
 P.2d 142 (Alaska 1976);
 557 P.2d 1136 (Alaska
 v. State, 559 P.2d 91
 utschler v. State, 560
 1977); Gilligan v. State,
 ka 1977); Bragg v. State,
 ska 1977); Nukapigak v.
 7 (Alaska 1977), aff'd on
 2d 982 (Alaska 1978);
 . 564 P.2d 20 (Alaska
 State, 571 P.2d 1013
 eter v. State, 572 P.2d
 3); Mullins v. State, 573
 1978); Welin v. State,
 ska 1978); Alex v. State,
 aka 1978); Menard v.
 6 (Alaska 1978); Brown
 2d 982 (Alaska 1978);
 ., 579 P.2d 1062 (Alaska
 e, 580 P.2d 304 (Alaska
 State, 581 P.2d 1119
 ndle v. State, 583 P.2d
 3); State v. Afcan, 583
 1978); Daniels v. State,
 aka 1978); Honeycutt v.
 5 (Alaska 1978); Fergu-

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son v. State, 590 P.2d 43 (Alaska 1979);
 One v. State, 592 P.2d 1193 (Alaska
 1979); Dayton v. State, 598 P.2d 67
 (Alaska 1979); Stone v. State, 598 P.2d 72
 (Alaska 1979); Edinger v. State, 598 P.2d
 943 (Alaska 1979); Larson v. State, 598
 P.2d 946 (Alaska 1979); Labarbera v.
 State, 598 P.2d 947 (Alaska 1979); Elstad
 v. State, 599 P.2d 137 (Alaska 1979);
 Charles v. State, 606 P.2d 390 (Alaska
 1980); Pyrdol v. State, 617 P.2d 513
 (Alaska 1980); Coleman v. State, 621 P.2d
 869 (Alaska 1980), cert. denied, 454 U.S.
 1090, 102 S. Ct. 653, 70 L. Ed. 2d 628
 (1981); Shearer v. State, 619 P.2d 726
 (Alaska 1980); Nelson v. State, 619 P.2d
 480 (Alaska Ct. App. 1980); Bryant v.
 State, 623 P.2d 310 (Alaska 1981); Hoover
 v. State, 641 P.2d 1263 (Alaska Ct. App.
 1982); Davidson v. State, 642 P.2d 1383
 (Alaska Ct. App. 1982); Parker v. State,
 714 P.2d 862 (Alaska Ct. App. 1986);
 State v. Price, 740 P.2d/476 (Alaska Ct.
 App. 1987); State v. Capjohn, 779 P.2d
 1255 (Alaska Ct. App. 1989); State v.
 Clark, 782 P.2d 308 (Alaska Ct. App.
 1989).
 Sentence too lenient. — See State v.
 Chaney, 477 P.2d 441 (Alaska 1970);
 State v. Wortham, 537 P.2d 1117 (Alaska
 1975); State v. Lancaster, 550 P.2d 1257
 (Alaska 1976); State v. Abraham, 566
 P.2d 267 (Alaska 1977); State v. Wassilie,
 578 P.2d 971 (Alaska 1978); Putnam v.
 State, 629 P.2d 35 (Alaska 1980); State v.
 Brinkley, 681 P.2d 351 (Alaska Ct. App.
 1984); Cleary v. State, 548 P.2d 952
 (Alaska 1976); Salazar v. State, 562 P.2d
 694 (Alaska 1977); Cleary v. State, 564
 P.2d 374 (Alaska 1977); Amidon v. State,
 565 P.2d 1248 (Alaska 1977); Black v.
 State, 569 P.2d 804 (Alaska 1977);
 Sumabat v. State, 580 P.2d 323 (Alaska

1978); Hansen v. State, 582 P.2d 1041
 (Alaska 1978); Kanipa v. State, 520 P.2d
 678 (Alaska 1980); Hintz v. State, 627
 P.2d 207 (Alaska 1981); State v. Hooper,
 750 P.2d 840 (Alaska Ct. App. 1988).
 Inclusion of improper reference to
 unverified police contacts did not re-
 quire remand for resentencing before
 different judge. — See Parks v. State,
 571 P.2d 1003 (Alaska 1977).
 Reference to unverified police contacts
 in a presentence report does not require a
 remand for resentencing where the record
 indicates that the sentencing judge was
 not unduly or improperly influenced by
 reference to the unverified police contacts.
 Pascoe v. State, 628 P.2d 547 (Alaska
 1980).
 Case remanded for resentencing. —
 See Neal v. State, 628 P.2d 19 (Alaska
 1981).
 Case remanded for sentence review.
 — Although a sentence of 15 years' im-
 prisonment with eligibility for parole at
 the discretion of the parole board upon
 conviction of manslaughter was not excee-
 sive, since the trial court had sentenced
 defendant as if his conviction had been
 obtained within one year of the crime and
 therefore substantially ignored his subse-
 quent history of steady employment, his
 meritorious service in the army, and his
 lack of involvement in any criminal activ-
 ity other than a few traffic offenses in the
 12 years since the commission of the
 crime, the case was remanded for the pur-
 pose of permitting the trial court to re-
 view the sentence it imposed, in light of
 all available information concerning de-
 fendant without excluding the time period
 commencing one year from the time of the
 killing until the present. Padie v. State,
 594 P.2d 50 (Alaska 1979).

Sec. 12.55.125. Sentences of imprisonment for felonies. (a) A
 defendant convicted of murder in the first degree shall be sentenced to
 a definite term of imprisonment of at least 20 years but not more than
 99 years. *conspiracy to commit murder in the first degree.*
 (b) A defendant convicted of murder in the second degree, at-
 tempted murder in the first degree, kidnapping, or misconduct involv-
 ing a controlled substance in the first degree shall be sentenced to a
 definite term of imprisonment of at least five years but not more than
 99 years.
 (c) A defendant convicted of a class A felony may be sentenced to a
 definite term of imprisonment of not more than 20 years, and shall be

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:
Referred:

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) In a prosecution under this section, it is a defense that the criminal objective was
11 actually achieved if the defendant is not legally accountable under AS 11.16.120(b) for the
12 conduct of the person with whom the defendant conspired.

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.

*an unclass felony if the object of the consp.
is murder in 1st degree.*

19 (f) Conspiracy is a

20 (1) class A felony if the object of the conspiracy is a crime punishable as an
21 unclassified felony; *other than murder in the 1st degree*

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

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

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

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

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

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

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

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

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

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

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

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

BY

Offered:
Referred:

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 heinous offense, the offender agrees with one or more
6 persons to engage in or cause the performance of that activity and the offender or one of the
7 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 heinous offense has conspired or will conspire with another
10 person or persons to commit the same heinous offense, the offender is guilty of conspiring with
11 that other person or persons to commit that crime whether or not the offender knows their
12 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) In a prosecution under this section, it is an affirmative defense that the defendant,
11 under circumstances manifesting a voluntary and complete renunciation of the defendant's
12 criminal intent, gave timely warning to law enforcement authorities or otherwise made proper
13 effort that prevented the commission of the crime that was the object of the conspiracy.
14 Renunciation by one conspirator does not affect the liability of another conspirator who does not
15 join in the renunciation.

16 (e) Conspiracy is the same class of offense as the most serious offense that was an object
17 of the conspiracy.

18 (f) In this section, "heinous offense" means an offense

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

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

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

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25 OR AS 11.31.110] that the crime the defendant attempted to commit, solicited to commit, or
26 conspired to commit [THAT IS THE OBJECT OF THE ATTEMPT OR SOLICITATION] was
27 actually committed pursuant to the attempt, solicitation, or conspiracy [OR SOLICITATION].

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

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30 11.31.120 [AS 11.31.100 OR AS 11.31.110] for conduct designed to commit or culminate in
31 commission of the same crime.

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

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

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE TROOPERS

WALTER J. HICKEL, GOVERNOR

RICHARD L. BURTON, COMMISSIONER

5700 EAST TUDOR ROAD
ANCHORAGE, ALASKA 09507
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,

John R. Murphy
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) 271-3224

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.

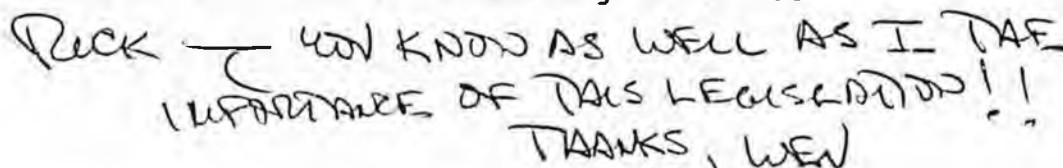
Yours Very Truly,


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, WEN

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 20510-0702
(202) 224-0865

722 WEST 4TH AVENUE, Box 1
ANCHORAGE, AK 99511-7170
(907) 771-3735

101 18TH AVENUE, Box 7
FAIRBANKS, AK 99701-6278
(907) 466-0233

P.O. BOX 21647
JUNEAU, AK 99802-1647
(907) 580-7400

170 TRADING BAY ROAD, Suite 30
KENAI, AK 99501-7716
(907) 703-5000

103 MAIN STREET
KEETCHIKAN, AK 99801-6436
(907) 225-6000

February 28, 1991

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

Dear Senator Hallford: *RH*

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

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, reading "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, 138th
5700 Tudor Road
Anchorage, Alaska 99507
(907) 269-5645

Secretary
Ted R. Carlson, 121st
P.O. Box 773288
Eagle River, Alaska 99577
(907) 694-2573Hm
(907) 688-2677

John T. McConnaughey, 120th, Past President
Glenn Flotha, 152nd, Vice President, South Central
Michael A. Nielson, 118th, Vice President, Northern
Dan Anslinger, 144th, Vice President, Southeast

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-



Wevley 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 Chinn-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 CRIPS 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.

Wevley 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.

People we have lined up to testify in support of SB 343:

IN ANCHORAGE:

1. John Murphy -- Alaska State Troopers and FBINAA
2. Sgt. Mike Grimes -- Anchorage Homicide
3. Joe Bottinni -- Asst. U.S. Attorney
4. Ed McNalley -- Anchorage District Attorney
5. Terry Marquart (?) -- U.S. Marshall and APOA

IN JUNEAU:

6. Duane Udland -- Anchorage Asst. Chief of Police and AACOP
7. Bob Casey -- Legal Drafter

QUESTIONABLE SUPPORT:

IN ANCHORAGE:

1. Brant McGee -- Public Advocacy
2. John Salemi -- Public Defender

People Available Today
To Answer Questions On
SB 343

- 1) Col. John Murphy
(or his designate) Alaska State Troopers Director
- 2) Terry Marquart or
Ed Harder, Exec. Dir. APOA U.S. Marshell or APOA
- 3) Tim Burgess and/or
Joe Bottini U.S. Attorney's Office
- 4) Ed McNalley
(Probable) Anchorage D.A.
- 5) Glenn Flothe State Troopers
- 6) Brant McGee
(might not arrive until
2:00pm) OPA
- 7) Dean Guaneli Law
- 8) Bob Casey Bill Drafter

S B

3 5 8

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

Ruler
just

DATE: 1/16/92

FURTHER:

Date of 5-Day Notice: 1/30/92
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/14/92

Judiciary Committee considered SB 358

"An Act making the theft of certain safety and survival equipment from a commercial fishing vessel theft in the second degree.)
and recommends: and a majority of the committee recommends it be replaced with

replace with _____ CS _____ SB 358 (JUD)

attaches amendment(s)

and do pass

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

adopts _____ Letter of Intent

further referral to the _____

30 Feb '92

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes LAW SB E. CS
ADMIN SB + CS
DPS SB + CS

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

Governor's bill with fiscal notes:
zero fiscal notes _____

fiscal notes _____

DO PASS:

1
1
Mark Hedley do pass
FRANK

OTHER RECOMMENDATIONS:

2
2 Copies Colles no res

1
Rick Halford do pass
Chair: Signature and Recommendation

**SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE**

Bill Number: SB 358
Abbreviated Title: _____

Sponsor: Elison Original Received: 1/16/92
Written Request to Schedule Rcv'd: 1/29 From: Elison
Sponsor's Statement Rcv'd: 1/29/92 From: Elison
Sectional Analysis Rqst'd: _____ From: _____
Sectional Analysis Received: _____

Fiscal Note (Original)

Rqst'd Of: <u>LAW 1/31</u>	Rcv'd From: _____	Date: _____
Rqst'd Of: <u>DPS 1/31</u>	Rcv'd From: _____	Date: _____
Rqst'd Of: _____	Rcv'd From: <u>Admin</u>	Date: <u>2/3/92</u>

Fiscal Note (C.S.)

Rqst'd Of: _____	Rcv'd From: _____	Date: _____
Rqst'd Of: _____	Rcv'd From: _____	Date: _____
Rqst'd Of: _____	Rcv'd From: _____	Date: _____

Five Day Notice Given: 1/30 Notice of Hearings Given: 1/30
Committees of Referral: First: JUD Second: _____ Third: _____
LAA Contact: _____ To Senate Secretary: _____

COMMITTEE ACTION

DATE:

<u>1/31</u>	<u>CS requested to include theft of Aircraft safety equip</u>
<u>2/4</u>	<u>CS adopted no working document ordered from Casey</u>
_____	<u>to include ref from AS & Fed regs to include</u>
_____	<u>definitions and requirement lists (cross reference) - Rewrite -</u>
<u>1/30</u>	<u>5 day notice given</u>
<u>2/1</u>	<u>CS adopted to include theft of Aircraft safety equip</u>
_____	<u>zero fiscal notes unchanged</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PERSONS TO BE NOTIFIED OF HEARING

- | | |
|---------------|-----------|
| 1. Sponsor | 6. _____ |
| 2. Agency | 7. _____ |
| 3. <u>LAW</u> | 8. _____ |
| 4. <u>DPS</u> | 9. _____ |
| 5. _____ | 10. _____ |

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 358

Revision Date: _____ Department Affected: Department of Law
 Title: "...making the theft of...survival BRU: Prosecution
equipment theft in the second degree." Component: All
 Sponsor: Senator Eliason
 Requestor: Senate Judiciary Committee COMPONENT SERIAL NO.

--	--	--	--

 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						
---------	--	--	--	--	--	--

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 Date: February 3, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 3, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 358

This bill amends AS 11.46.130 to provide that a person commits the crime of theft in the second degree if the property is vessel safety or survival equipment and the property is taken from a licensed commercial fishing vessel or a vessel used exclusively for commercial salmon fishing that has been exempted from state licensing requirements under AS 16.05.495. The bill also amends AS 16.05.710(b) to provide that when a person is convicted of this crime a court shall, in addition to the penalty imposed by law, suspend one or more of the person's commercial fishing privileges or licenses for one year for a first conviction, and suspend their privileges for two years for a second or subsequent conviction. Theft in the second degree is a class C felony.

The Department of Law does not anticipate a fiscal impact because many safety and survival devices have a value that exceeds the \$500 threshold for theft in the second degree.

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 358

1992 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Administration

Title: "An Act making the theft of certain safety and survival equipment from a commercial fishing vessel theft in the second degree."

BRU: Public Defender Agency

Sponsor: Ellason

Component: Public Defender Agency

Requestor: Senate Judiciary

COMPONENT SERIAL NO.

1	6	3	1
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

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

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

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

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

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

Phone: 279-7541
Date: January 27, 1992

Approved by Commissioner: Nancy Bear Usara
Agency: Administration

Date: 2/3/92

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 358

ANALYSIS: (continued)

Normally in order to be charged with the crime of theft in the second degree, one must steal property which has the value of more than \$500. This proposal expands the definition of Theft in the Second Degree to include Theft of Safety and Survival Equipment from a Commercial Fishing Vessel regardless of its value.

This bill, if passed into law, will have no fiscal impact on the Public Defender Agency.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 358

Revision Date: _____ Department Affected: Public Safety
 Title: "An Act making the theft of certain equipment theft in the second degree." BRU: Fish & Wildlife Protection
 Component: Enforcement & JSU
 Sponsor: Senator Eliason
 Requestor: Senate Judiciary COMPONENT SERIAL NO.

4	9	0
---	---	---

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
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
-------------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

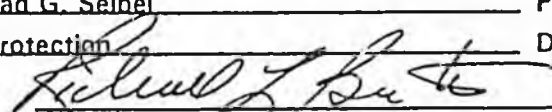
POSITIONS:

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 in anticipated.

Prepared By: Captain Conrad G. Seibel Phone: 269-5509
 Division: Fish & Wildlife Protection Date: 2/1/92
 Approved by Commissioner:  Richard L. Burton
 Agency: Department of Public Safety Date: 2/3/92

ALASKA STATE LEGISLATURE SENATE
SENATOR RICHARD I. ELIASON

PRESIDENT OF THE SENATE
LABOR & COMMERCE COMMITTEE
RESOURCES COMMITTEE
RULES COMMITTEE
CHAIRMAN, SPECIAL COMMITTEE ON
DOMESTIC & INTERNATIONAL
COMMERCIAL FISHERIES



P.O. BOX 141
SITKA, ALASKA 99835

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465 4016

FAX (907) 465 4028

MEMORANDUM

TO: Senator Rick Halford, Chairman
Senate Judiciary Committee

FROM: Senator Dick Eliason *Dick Eliason*

DATE: January 29, 1992

RE: Request for hearing on SB 358, relating to
theft of safety/survival equipment from commercial
fishing vessel

I hope that the Judiciary Committee will soon schedule for a hearing Senate Bill 358, relating to the criminal penalty for theft of safety and survival equipment from a commercial fishing vessel.

Thank you for your consideration of this request.

ALASKA STATE LEGISLATURE SENATE

SENATOR RICHARD I. ELIASON

PRESIDENT OF THE SENATE
LABOR & COMMERCE COMMITTEE
RESOURCES COMMITTEE
RULES COMMITTEE
CHAIRMAN, SPECIAL COMMITTEE ON
DOMESTIC & INTERNATIONAL
COMMERCIAL FISHERIES



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FAX (907) 465-4928

1/29/92

TESTIMONY OF SEN. DICK ELIASON, PRIME SPONSOR, REGARDING SB 358,
"An Act making the theft of certain safety and survival equipment form a
commercial fishing vessel theft in the second degree."

The U. S. Coast Guard, in the course of implementing provisions of the Commercial Fishing Industry Vessel Safety Act of 1988, has issued regulations which include requirements for the safety and survival equipment aboard uninspected commercial fishing vessels. The regulations went into effect in late 1991, although some provisions have a delayed effective date. The purpose of the regulations is to prevent unnecessary loss of life, and the Coast Guard believes they will also result in fewer pollution incidents arising from vessel loss.

Alaska fishermen are required to make substantial expenditures on safety and survival equipment in order to comply with these regulations, and more vessels than ever before are equipped with survival suits, EPIRBs (Emergency Position Indicating Locator Beacons), and fire fighting equipment. This is good news, especially in light of the fact that commercial fishing is considered one of the most dangerous occupations.

Unfortunately, there have been increasing problems with theft of safety equipment from fishing vessels. The repercussions of such a theft can be disastrous. At the top of the list is the horrible possibility that lives would be lost due to an emergency at sea, the very thing the new Coast Guard regulations seek to prevent. The theft of equipment just prior to a fishing opening could result in the loss of the opportunity to fish, either because the theft was discovered and the vessel remained in port, or because the Coast Guard exercised its authority to compel the vessel to return to port immediately. Given the brevity of the fishing openings these days, an individual could miss an entire opening and be financially ruined as a result. In addition, the Coast Guard may impose stiff civil and criminal penalties for violations of the regulations.

Sponsor Statement

SB 358
page two

Senate Bill 358 makes it a class C felony, rather than a class A misdemeanor, to steal certain safety and survival equipment from a commercial fishing vessel, whether or not the value of the property exceeds \$500. The safety and survival equipment is closely defined in the bill. The measure also includes a section to provide that if the offense is committed by a commercial fisherman, he or she stands to lose fishing licenses and privileges. This is consistent with penalties now on the books for theft of fishing gear.

The purpose of the legislation is to discourage the theft of safety equipment from commercial fishing vessels, and I strongly encourage its adoption.

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

February 3, 1992

SUBJECT: CS to SB 358, adding theft of aircraft safety equipment and upgrading the crime to a class C felony

TO: Senator Rick Halford

FROM: Robert Glennon Casey *RGC*
Legislative Counsel

A committee substitute has been prepared which adds "aircraft safety equipment" to the list of items whose theft would violate AS 11.46.130.

It would be much better, however, if the committee substitute defined aircraft safety equipment. That would follow the example of the original bill, which adds "vessel safety or survival equipment" as items whose theft would violate the statute and then goes on to define safety and survival equipment.

To further parallel the other items in the list, I have limited this to thefts from aircraft. Also, you requested that the status of the crime be upgraded to a class C felony. AS 11.46.130 is already a class C felony, so the committee substitute makes no change in that area.

RGC:gc
92-093.glc

Enclosure

7-LS1603G
Casey
2/11/92

CS FOR SENATE BILL NO. 358 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS ELIASON, Zharoff, Halford, Sturgulewski

A BILL

FOR AN ACT ENTITLED

1 "An Act making the theft of certain safety and survival equipment from watercraft and
2 aircraft theft in the second degree."

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

4 * Section 1. AS 11.46.130(a) is amended to read:

5 (a) A person commits the crime of theft in the second degree if the person commits theft
6 as defined in AS 11.46.100 and

7 (1) the value of the property or services is \$500 or more but less than \$25,000;

8 (2) the property is a firearm or explosive;

9 (3) the property is taken from the person of another; [OR]

10 (4) the property is taken from a vessel and is vessel safety or survival
11 equipment;

12 (5) the property is taken from an aircraft and the property is aircraft safety
13 or survival equipment; or

14 (6) the value of the property is \$50 or more but less than \$500 and within the

1 preceding five years the person has been convicted and sentenced on two or more separate
2 occasions in this or another jurisdiction of

3 (A) AS 11.46.120, or an offense under another law or ordinance with
4 similar elements;

5 (B) a crime set out in this subsection or an offense under another law or
6 ordinance with similar elements;

7 (C) AS 11.46.140(a)(1) or (2), or an offense under another law or
8 ordinance with similar elements; or

9 (D) AS 11.46.220(c)(1) or (c)(2)(A), or an offense under another law or
10 ordinance with similar elements.

11 * Sec. 2. AS 11.46.130 is amended by adding a new subsection to read:

12 (c) In this section,

13 (1) "aircraft" means a contrivance used or designed for navigation of flight in air,

14 (2) "aircraft safety or survival equipment" means equipment required to be carried
15 on an aircraft under AS 02.30.010 or AS 02.35.110;

16 (3) "vessel" means every description of watercraft, other than a seaplane on water,
17 used or capable of being used as a means of transportation on water;

18 (4) "vessel safety or survival equipment" means personal flotation devices;
19 immersion suits; personal flotation device lights; survival craft; equipment necessary for the
20 proper operation of survival craft; emergency position indicating radio beacons; fire extinguishers
21 and supporting equipment; firefighters' outfits; and self contained breathing apparatuses; in this
22 subparagraph, "survival craft" means a device designed to enable a person to survive the loss of
23 a vessel, and includes buoyant apparatuses, inflatable buoyant apparatuses, life floats, inflatable
24 life rafts, and auxiliary craft, including skiffs, usable as survival craft.

25 * Sec. 3. AS 11.46.295 is amended to read:

26 Sec. 11.46.295. PRIOR CONVICTIONS. For purposes of considering prior convictions
27 in prosecuting a crime of theft under AS 11.46.130(a)(6) [AS 11.46.130(a)(4)] or 11.46.140(a)(3),
28 or in prosecuting the crime of concealment of merchandise under AS 11.46.220(c), a conviction
29 for an offense under another law or ordinance with similar elements is a conviction of an offense
30 having elements similar to those of an offense defined as such under Alaska law at the time the
31 offense was committed.

7-LS1603ND
Casey
2/3/92

CS FOR SENATE BILL NO. 358 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS ELIASON, Zharoff, Halford, Sturgulewski

A BILL

FOR AN ACT ENTITLED

1 "An Act making the theft of certain safety and survival equipment from a commercial
2 fishing vessel and theft of aircraft safety equipment theft in the second degree."

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

4 * Section 1. AS 11.46.130(a) is amended to read:

5 (a) A person commits the crime of theft in the second degree if the person commits theft
6 as defined in AS 11.46.100 and

7 (1) the value of the property or services is \$500 or more but less than \$25,000;

8 (2) the property is a firearm or explosive;

9 (3) the property is taken from the person of another; [OR]

10 (4) the property is taken from a vessel licensed under AS 16.05.490, or a
11 vessel used for a purpose described in AS 16.05.495, and the property is vessel safety or
12 survival equipment;

13 (5) the property is taken from an aircraft and the property is aircraft safety
14 equipment; or

Proposed CS to SB 358
By Senator Halford

1 (6) the value of the property is \$50 or more but less than \$500 and within the
2 preceding five years the person has been convicted and sentenced on two or more separate
3 occasions in this or another jurisdiction of

4 (A) AS 11.46.120, or an offense under another law or ordinance with
5 similar elements;

6 (B) a crime set out in this subsection or an offense under another law or
7 ordinance with similar elements;

8 (C) AS 11.46.140(a)(1) or (2), or an offense under another law or
9 ordinance with similar elements; or

10 (D) AS 11.46.220(c)(1) or (c)(2)(A), or an offense under another law or
11 ordinance with similar elements.

12 * Sec. 2. AS 11.46.130 is amended by adding a new subsection to read:

13 (c) In this section, "vessel safety or survival equipment" means personal flotation devices;
14 immersion suits; personal flotation device lights; survival craft; equipment necessary for the
15 proper operation of survival craft; emergency position indicating radio beacons; fire extinguishers
16 and supporting equipment; firefighters' outfits; and self contained breathing apparatuses; in this
17 subparagraph, "survival craft" means a device designed to enable a person to survive the loss of
18 a vessel, and includes buoyant apparatuses, inflatable buoyant apparatuses, life floats, inflatable
19 life rafts, and auxiliary craft, including skiffs, usable as survival craft.

20 * Sec. 3. AS 11.46.295 is amended to read:

21 Sec. 11.46.295. PRIOR CONVICTIONS. For purposes of considering prior convictions
22 in prosecuting a crime of theft under AS 11.46.130(a)(6) [AS 11.46.130(a)(4)] or 11.46.140(a)(3),
23 or in prosecuting the crime of concealment of merchandise under AS 11.46.220(c), a conviction
24 for an offense under another law or ordinance with similar elements is a conviction of an offense
25 having elements similar to those of an offense defined as such under Alaska law at the time the
26 offense was committed.

27 * Sec. 4. AS 16.05.710(b) is amended to read:

28 (b) Upon a first conviction of a person for a violation of AS 11.46.120 - 11.46.130 in
29 which the property is commercial fishing gear as defined in AS 16.43.990 or is vessel safety or
30 survival equipment as defined in AS 11.46.130, the court shall, in addition to the penalty
31 imposed by law, suspend one or more of the person's commercial fishing privileges and licenses

1 for one year. Upon a second or subsequent conviction for a violation of AS 11.46.120 -
2 11.46.130 or a similar law of another jurisdiction in which the property is commercial fishing
3 gear as defined in AS 16.43.990 or is vessel safety or survival equipment as defined in
4 AS 11.46.130, the court shall, in addition to the penalty imposed by law, suspend one or more
5 of the person's commercial fishing privileges and licenses for two years.

Alaska Marine Safety Education Association

Box 2592, Sitka, Alaska 99835

(907) 747-3287

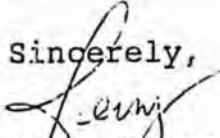
Oct. 30, 1991

Laura Fleming:

Enclosed is the whole 9 yards; Final Rule of the Commercial Fishing Vessel Safety Act, the USCG boarding officer's checklist, and a copy of N-VIC 12-91. The last page of 12-91 outlines the specific guidelines boarding officers will use to determine whether or not to terminate a F/V's voyage due to a potential or existing safety hazard.

Sorry I didn't include this with the original mailing. Please feel free to contact me if you have any other questions.

Sincerely,


Jerry Dzugan
Director

MEMBER ORGANIZATIONS

Alaska Department of Health & Social Services,
Emergency Medical Services Section
Alaska Department of Public Safety
Northstar Survival, Inc.
Southeast Alaska Regional Health Corporation

Southeast Regional Emergency Medical Services Council
United States Coast Guard
University of Alaska Marine Advisory Program
Alaska Department of Education
Alaska Vocational Technical School (AVTEC)



NOTE LAST PAGE

COMDTPUB P1670C.4
NVIC 12-91

13 SEP 1991

NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 12-91

Subj: Termination of Unsafe Operations Aboard Commercial Fishing Industry Vessels

1. PURPOSE. The purpose of this Circular is to provide guidance to commercial fishing industry vessel owners/operators and Coast Guard personnel on termination of unsafe operations on commercial fishing industry vessels.
2. BACKGROUND.
 - a. The Commercial Fishing Industry Vessel Safety Act of 1988, P.L. 101-424 (now codified as 46 U.S.C. Chapter 45), addresses safety of commercial fishing industry vessels in several ways. One of these ways is by addressing unsafe operations.
 - b. Title 46 U.S.C. Section 4505 states that a Coast Guard enforcement official "may direct the individual in charge to immediately take reasonable steps necessary for the safety of the individuals on board the vessel if the official observes the vessel being operated in an unsafe condition that the official believes (emphasis added) creates an especially hazardous condition."
 - c. Termination of unsafe operations may result in the master or individual in charge of a vessel being ordered to return the vessel to a mooring until the hazardous condition is corrected or to cease a specific operation until the especially hazardous condition is alleviated or corrected. It is emphasized that immediate return of a vessel to a mooring is only one of several options available to boarding officers. Other options include but are not limited to:

DISTRIBUTION - SDL No. 129

	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w	x	y	z
A																										
B		2	10		3		3	1						132	1		1	1								30
C					*							1	*													
D	1	1		1*							1	*														
E														2	2											
F	1		1								1															
G																										
H																										

NON-STANDARD DISTRIBUTION: (See Page 4.)

NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 12-91
13 SEP 1991

2. c. (1) Immediate correction of the hazardous condition;
- (2) Filing of a Report of Violation against the owner, master, individual in charge of the vessel;
- (3) Referral to the Marine Safety Office or Marine Inspection Office for investigation and possible Suspension and Revocation action against Coast Guard issued licenses.

3. DISCUSSION.

- a. This Circular does not replace or modify existing statutes or regulations, but provides guidance and illustrations of conditions under which a commercial fishing industry vessel may be subject to termination action under 46 U.S.C. 4505.
- b. Boardings of commercial fishing industry vessels are routinely conducted by the Coast Guard. One part of the boarding officer's responsibility is to assess whether a vessel may present an especially hazardous condition warranting termination action. This Circular is intended to provide guidance to all interested parties on conditions which may be deemed especially hazardous and enforcement action which may be appropriate.
- c. In evaluating the safety of a vessel, there are many considerations that bear upon the decision that an especially hazardous condition exists. It is impossible to list all of the variables that should be considered in evaluating the safety of a particular vessel. However, enclosure (1) lists some of the areas that have proven to be problems in past casualties and should be considered in evaluating a vessel's safety. This list is not all inclusive; it attempts to illustrate the general gravity of conditions which may warrant enforcement action.
- d. Decisions to terminate operations of fishing industry vessels are made by boarding officers in accordance with district policies. Once the decision has been made to terminate operations, the boarding officer will decide whether to remove individuals and whether to escort or tow a fishing industry vessel to a mooring. This decision will be based on the judgement of the Coast Guard boarding officer considering the particular

13 SEP 1991

12-91

3. d. (cont'd) circumstances at the time of the boarding. Consideration will be given to existing/future weather, sea conditions, the extent of the unsafe condition, the ability of the vessel to effect adequate temporary repairs, etc.
 - e. It is recognized that termination of commercial operations may have a serious economic impact on owners/operators. In all cases, the basis for termination will be the potential for loss of life or injury resulting when an especially hazardous condition exists.
 - f. It is the obligation of the owner and master to ensure that each vessel is properly maintained, equipped, and operated at all times. While at sea, the master has the responsibility to operate the vessel within the limits of its design capabilities.
4. PENALTIES. The owner, charterer, managing operator, agent, master, and individual in charge of a fishing industry vessel, which is operated in violation of the regulations prescribed under 46 U.S.C. Chapter 45, may each be assessed a civil penalty of up to \$5,000. Any vessel which is assessed a penalty under 46 U.S.C. 4507 is liable in rem for the penalty. A person willfully violating this chapter is subject to a fine of up to \$5,000 and imprisonment for up to one year. These penalties are in addition to termination of the operation and Suspension and Revocation proceedings against Coast Guard issued licenses.
5. IMPLEMENTATION.
 - a. District commanders are encouraged to give this NVIC wide dissemination.
 - b. This Circular is effective immediately.
 - c. District Fishing Vessel Safety Coordinators shall work closely with District Operational Law Enforcement staff by providing technical assistance to ensure uniform enforcement.

NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 12-91.

3 SEP 1991

5. d. Owners and operators of commercial fishing industry vessels are encouraged to maintain and equip their vessels in a manner consistent with the regulations and good marine practice. Questions regarding this Circular should be addressed to the nearest Coast Guard District Office, Attn: Fishing Vessel Safety Coordinator.



D. H. WHITTEN
ACTING CHIEF, OFFICE OF MARINE SAFETY,
SECURITY AND ENVIRONMENTAL PROTECTION

Encl: (1) Termination of Unsafe Operations on Board Commercial Fishing Industry Vessels

Non-Standard Distribution:

C:e New Orleans (90); Baltimore (45); San Francisco (40); Philadelphia, Port Arthur, Honolulu, Puget Sound (35); Miami, Houston, Mobile, Los Angeles Long Beach, Morgan City (25); Hampton Roads, Jacksonville, Portland OR (20); Boston, Portland ME, Charleston, Anchorage (15); Cleveland (12); Louisville, Memphis, Paducah, Pittsburgh, St. Louis, Savannah, San Juan, Tampa, Galveston, Buffalo, Chicago, Detroit, Duluth, Milwaukee, San Diego, Juneau, Valdez (10); Providence, Huntington, Wilmington, Corpus Christi, Toledo, Guam (5).

C:m New York (70); St. Ignace (5); Sturgeon Bay (4).

D:d Except Baltimore, Monterey, Moriches.

D:l CG Liaison Officer MILSEALIFTCOMD (Code N-7CG), CG Liaison Officer RSPA (DHM-22), CG Liaison Officer MARAD (MAR-720.2), CG Liaison Officer JUSMAGPHIL (1).

NOAA Fleet Inspection Officer (1).

ABS (220).

TERMINATION OF UNSAFE OPERATIONS
ON BOARD COMMERCIAL FISHING INDUSTRY VESSELS

The following practices are considered to be unsafe and may create especially hazardous conditions for individuals on board fishing industry vessels. A vessel found with one of these unsafe conditions, while operating (at sea), may be considered for termination by a Coast Guard boarding officer. Termination will result in ordering an individual in charge of a vessel to return the vessel to a mooring or dock until the hazardous condition is corrected, or ordering cessation of a specific operation until the especially hazardous condition is alleviated or corrected. This list does not exclude any other conditions which in the opinion of the boarding officer are especially hazardous.

These items are applicable to United States flag vessels that are commercial fishing, fish processing, or in a fish tendering operation. However, each item may not apply to all vessels. Certain regulations apply only to limited categories of vessels. In all cases, 46 CFR Subpart 28 should be referenced for specific applicability.

UNSAFE PRACTICES

1. Operation without sufficient lifesaving equipment on board. This may include:
 - a. No personal flotation devices (PFD's) or required immersion suits on board, insufficient quantity of PFD's or immersion suits, or PFD's and immersion suits which are unserviceable.
 - b. No survival craft on board, insufficient survival craft capacity for the number of persons on board, or a survival craft in an unserviceable condition.
2. Operation without either an operable Emergency Position Indicating Radio Beacon or radio communication equipment. Either or both may be required by the regulations. When both are required then one must be operable. The intent is that there be at least one means of communicating distress.
3. Operation without adequate firefighting equipment on board.

Enclosure (1) to Navigation and Vessel Inspection Circular No. 12-91

4. Excessive volatile fuel (gasoline or solvents) or volatile fuel vapors in bilges.
5. Instability resulting from overloading, improper loading or lack of freeboard.
6. Inoperable bilge system.
7. Intoxication of the operator, as defined in 33 CFR 95.020. Individuals operating vessels other than recreational vessels are considered to be intoxicated when they have an alcohol concentration of .04% by weight or more in their blood; or, the effect of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.
8. A total lack of operable navigation lights during periods of reduced visibility.
9. Watertight closures missing or inoperable.
10. Flooding or uncontrolled leakage.
11. Failure to have a currently endorsed Load Line Certificate, when required.

Wednesday
August 14 1991

ACTUAL REGS
START ON PAGE 40396

REGS
START
ON
PAGE
40396

Part II

**Department of
Transportation**

Coast Guard

**46 CFR Part 28
Commercial Fishing Industry Vessel
Regulations; Final Rule**

request such designation in writing. As a minimum the organization must verify that it—

(a) Publishes standards for vessel design and construction which are as widely available as and which are of similar content to the standards published by the ABS;

(b) Performs periodic surveys in a wide range of localities during and after construction to ensure compliance with published standards, including drydock examinations, in a manner similar to the ABS;

(c) Issues certificates testifying to compliance with the published standards;

(d) Has as its primary concern the survey and classification of vessels;

(e) Has no interest in owning or operating fishing, fish processing, or fish tender vessels; and

(f) Maintains records of surveys and makes such records available to the Coast Guard upon request in a manner similar to the ABS.

§ 28.80 Report of casualty.

(a) Except for a casualty which is required to be reported to the Coast Guard on Form CG 2692 in accordance with part 4 of this chapter, the owner, agent, operator, master, or individual in charge of a vessel involved in a casualty must submit a report in accordance with paragraph (c) of this section, as soon as possible after the casualty, to the underwriter of primary insurance for the vessel or to an organization listed in paragraph (d) of this section whenever the casualty involves any of the following.

(1) Loss of life.

(2) An injury to an individual that causes that individual to remain incapacitated for a period in excess of 72 hours.

(3) Loss of a vessel.

(4) Damage to or by a vessel, its cargo, apparel or gear, except for fishing gear while not on board a vessel, or that impairs the seaworthiness of the vessel, or that is initially estimated at \$2,500.00 or more.

(b) Each underwriter of primary insurance for a commercial fishing industry vessel must submit a report of each casualty involving that vessel to an organization listed in paragraph (d) of this section within 90 days of receiving notice of the casualty and whenever it pays a claim resulting from the casualty. Initial reports must be in accordance with paragraph (c) of this section. Subsequent reports must contain sufficient information to identify the casualty and any new or corrected casualty data.

(c) Each report of casualty must include the following information:

(1) The name and address of the vessel owner and vessel operator, if different than the vessel owner;

(2) The name and address of the underwriter of primary insurance for the vessel;

(3) The name, registry number, call sign, gross tonnage, year of build, length, and hull material of the vessel;

(4) The date, location, primary cause, and nature of the casualty;

(5) The specific fishery, intended catch, and length of fishery opening when applicable;

(6) The date that the casualty was reported to the underwriter of primary insurance for the vessel, or to an organization acceptable to the Commandant;

(7) The activity of the vessel at the time of the casualty;

(8) The weather conditions at the time of the casualty, if the weather caused or contributed to the cause of the casualty;

(9) The damages to or by the vessel, its apparel, gear, or cargo;

(10) The monetary amounts paid for damages;

(11) The name, birth date, social security number, address, job title, length of disability, activity at the time of injury, type of injury, and medical treatment required for each individual incapacitated for more than 72 hours, or deceased as a result of the casualty;

(12) The name, registry number, and call sign of every other vessel involved in the casualty; and

(13) The monetary amount paid for an injury or a death.

(d) A casualty to a commercial fishing industry vessel must be reported to an organization that has knowledge and experience in the collection and processing of statistical insurance data and that has been accepted by the Commandant to receive and process casualty data under this part. The Commandant has accepted for this purpose:

(1) Marine Index Bureau, Inc., P.O. Box 1964, New York, NY 10156-0612.

(2) Reserved.

Note: The Coast Guard intends to treat information collected under this section from underwriters of primary insurance as exempt from disclosure under the Freedom of Information Act because it is commercial and financial information which, if disclosed, would be likely to cause substantial harm to the competitive position of the underwriter.

§ 28.90 Report of injury.

Each individual employed on a commercial fishing industry vessel must notify the master, individual in charge of

the vessel, or other agent of the employer of each illness, disability, or injury suffered while in service to the vessel not later than seven days after the date on which the illness, disability, or injury arose.

§ 28.95 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with part 1, subpart 1.03 of this chapter.

Subpart B—Requirements For All Vessels

§ 28.100 Applicability.

Each commercial fishing industry vessel must meet the requirements of this subpart, in addition to the requirements of parts 24, 25, and 26 of this chapter.

§ 28.105 Lifesaving equipment—general requirements.

(a) In addition to the requirements of this subpart, each commercial fishing industry vessel must comply with the requirements of part 25 subpart 25.25 of this chapter.

(b) Except as provided in § 28.120(d), each item of lifesaving equipment carried on board a vessel to meet the requirements of this part must be approved by the Commandant. Equipment for personal use which is not required by this part need not be approved by the Commandant.

§ 28.110 Life preservers or other personal flotation devices.

(a) Except as provided by § 28.305 of this chapter, after November 15, 1991, each vessel must be equipped with at least one immersion suit, exposure suit, or wearable personal flotation device of the proper size for each individual on board as specified in table 28.110 and part 25, subpart 25.25 of this chapter. Notwithstanding the provisions of paragraphs (c) and (d) of § 25.25-1 of this chapter, each commercial fishing industry vessel propelled by sail or a manned barge employed in commercial fishing activities must meet the requirements of this paragraph.

(b) Each wearable personal flotation device must be stowed so that it is readily accessible to the individual for whom it is intended, from both the individual's normal work station and berthing area. If there is no location accessible to both the work station and the berthing area, an appropriate device must be stowed in both locations.

TABLE 28.110.—PERSONAL FLOTATION DEVICES AND IMMERSION SUITS

Applicable waters	Vessel type	Devices required	Other regulations
Seaward of the Boundary Line and North of 32° N; or South of 32° S; or Great Lakes.	Documented vessels.....	Immersion suit or exposure suit ¹	28.135; 25.25-9(a); 25.25-13; 25.25-15.
Coastal waters or beyond cold waters (includes Great Lakes).	All vessels.....do ¹	Do.
All other waters.....	40 feet (12.2 meters) or more in length...	Type I, Type V commercial hybrid, immersion suit, or exposure suit ² .	28.135; 25.25-5(e); 25.25-5(f); 25.25-9(a); 25.25-13; 25.25-15.
Do.....	Less than 40 feet (12.2 meters) in length.	Type I, Type II, Type III, Type V commercial hybrid immersion suit, or exposure suit ³ .	Do.

¹ Until September 1, 1995, individuals weighing less than 44 pounds (196 Newtons) may substitute an approved personal flotation device of the appropriate size for a required immersion suit or exposure suit.
² Certain Type V personal flotation devices are approved for substitution for Type I, II, or III personal flotation devices when used in accordance with the conditions stated in the Coast Guard approval label.

§ 28.115 Ring life buoys.

(a) Except as provided in paragraph (b) of this section and § 28.305, after November 15, 1991, each vessel must be equipped with a throwable flotation device or a ring life buoy as specified in table 28.115. If the vessel is equipped with a ring life buoy, at least one ring life buoy must be equipped with a line which is at least:

- (1) 60 feet (18.3 meters) in length for a vessel less than 65 feet (19.8 meters) in length; or
- (2) 90 feet (27.4 meters) in length for a vessel 65 feet (19.8 meters) or more in length.

(b) For each vessel less than 65 feet (19.8 meters) in length, an approved 20 inch (0.51 meters) or larger ring life buoy which is in serviceable condition and which was installed on board before September 15, 1991, may be used to meet the requirements of paragraph (a) of this section.

TABLE 28.115.—THROWABLE FLOTATION DEVICES

Vessel length	Devices required
Less than 16 feet (4.9 meters).	None.
16 feet (4.9 meters) or more, but less than 26 feet (7.9 meters).	1 buoyant cushion, or ring life buoy (Type IV PFD) meters).
26 feet (7.9 meters) or more, but less than 65 feet (19.8 meters).	1 ring life buoy approval number starting with 160.009 or 160.050; orange; at least 24 inch (0.61 meters) size.
65 feet (19.8 meters) or more.	3 ring life buoys, approval number 160.50; orange; at least 24 inch (0.61 meters) size.

Note: Certain Type V PFDs are approved for use in substitution for Type IV PFDs, when used in accordance with the conditions stated in the Coast Guard approval label.

§ 28.120 Survival craft.

(a) Except as provided in paragraphs (b) and (d) through (h) of this section, each vessel must carry the survival craft specified in table 28.120(a), table 28.120(b), or table 28.120(c), as appropriate for the vessel, in an aggregate capacity to accommodate the total number of individuals on board.

(b) The requirements of this section do not apply to a vessel with less than 4 individuals on board which operates within 12 miles of the coastline.

(c) Except as provided by § 28.305, compliance dates for the requirements for the number and type of survival craft in tables 28.120(a), 28.120(b), and 28.120(c) are

- (1) For a documented vessel that operates in the North Pacific Area, September 1, 1992;
- (2) For a documented vessel that operates in the Great Lakes or in the Atlantic Ocean north and east of a line drawn at a bearing 150° true from Watch Hill Light, Rhode Island, September 1, 1993;
- (3) For each other documented vessel, September 1, 1994; and
- (4) For each other vessel, September 1, 1995.

(d) Each survival craft installed on board a vessel before September 15, 1991, may continue to be used to meet the requirements of this section provided the survival craft is:

- (1) Of the same type as required in tables 28.120(a), 28.120(b), or 28.120(c), as appropriate for the vessel type; and
- (2) Maintained in good and serviceable condition.

(e) Each inflatable liferaft installed on board a vessel before September 15, 1991, may continue to be used to meet the requirements for an approved inflatable liferaft, provided the existing liferaft is maintained in good and serviceable condition as required by table 28.140, and it is equipped with the equipment pack required by tables 28.120(a), 28.120(b), or 28.120(c), as appropriate for the vessel type. Where no equipment pack is specified in tables 28.120(a), 28.120(b), or 28.120(c), a coastal service pack is required.

(f) An approved lifeboat may be substituted for any survival craft required by this section, provided it is arranged and equipped in accordance with part 94 of this chapter.

(g) The capacity of an auxiliary craft carried on board a vessel which is integral to and necessary for normal fishing operations will satisfy the requirements of this section for survival craft, except for an inflatable liferaft, provided the craft is readily accessible during an emergency and is capable of safely holding all individuals on board the vessel. If the auxiliary craft is equipped with a Coast Guard required capacity plate, the boat must not be loaded so as to exceed the rated capacity.

(h) A vessel less than 36 feet in length which meets the positive flotation provisions of 33 CFR part 183 is exempt from the requirement for survival craft in paragraph (a) of this section for operation on the following waters:

- (1) Within 12 miles of the coastline, any waters; and
- (2) Rivers

TABLE 28.120 (a).—SURVIVAL CRAFT FOR DOCUMENTED VESSELS

Area	Vessel type	Survival craft required
Beyond 50 miles of coastline.....	All.....	Inflatable liferaft with SOLAS A pack.
Between 20-50 miles of coastline, cold waters.....	All.....	Inflatable liferaft with SOLAS B pack.

TABLE 28.120 (a).—SURVIVAL CRAFT FOR DOCUMENTED VESSELS—Continued

Area	Vessel type	Survival craft required
Between 20-50 miles, of coastline, warm waters.....	All.....	Inflatable liferaft.
Beyond Boundary Line, within 20 miles of coastline, cold waters.....	All.....	Inflatable liferaft.
Beyond Boundary Line within 20 miles of coastline, warm waters.....	All.....	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters.....	36 feet (11 meters) or more in length.....	Inflatable buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	None.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.....	All.....	None.
Great Lakes, cold waters.....	36 feet (11 meters) or more in length.....	Inflatable buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline, warm waters.....	All.....	Buoyant apparatus.
Great Lakes, within 3 miles of coastline, warm waters.....	All.....	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

TABLE 28.120(b).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH NOT MORE THAN 16 INDIVIDUALS ON BOARD

Area	Vessel type	Survival craft required
Beyond 20 miles of coastline.....	All.....	Inflatable buoyant apparatus.
Beyond Boundary Line, within 20 miles of coastline, cold waters.....	All.....	Inflatable buoyant apparatus.
Beyond Boundary Line, within 20 miles of coastline, warm waters.....	All.....	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters.....	36 feet (11 meters) or more in length.....	Buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	None.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.....	All.....	None.
Great Lakes, cold waters.....	All.....	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline, warm waters.....	All.....	Buoyant apparatus.
Great Lakes, within 3 miles of coastline, warm waters.....	All.....	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

TABLE 28.120(c).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH MORE THAN 16 INDIVIDUALS ON BOARD

Area	Vessel type	Survival craft required
Beyond 50 miles of coastline.....	All.....	Inflatable liferaft with SOLAS A pack.
Between 20-50 miles of coastline, cold waters.....	All.....	Inflatable liferaft with SOLAS B pack.
Between 20-50 miles of coastline, warm waters.....	All.....	Inflatable liferaft.
Beyond Boundary Line, within 20 miles of coastline, cold water.....	All.....	Inflatable liferaft.
Beyond Boundary Line within 20 miles of coastline, warm waters.....	All.....	Life float.
Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters.....	36 feet 11 (meters) or more in length.....	Inflatable buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	None.
Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters.....	All.....	None.
Great Lakes, cold waters.....	36 feet (11 meters) or more in length.....	Inflatable buoyant apparatus.
Do.....	Less than 36 feet (11 meters) in length.....	Buoyant apparatus.
Great Lakes, beyond 3 miles of coastline, warm waters.....	All.....	Buoyant apparatus.
Great Lakes, within 3 miles of coastline, warm waters.....	All.....	None.

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

§ 28.125 Stowage of survival craft.

(a) Each inflatable liferaft required to be equipped with a SOLAS A or a SOLAS B equipment pack must be stowed so as to float free and automatically inflate in the event the vessel sinks.

(b) Each inflatable liferaft, inflatable buoyant apparatus, and any auxiliary craft used in their place, must be kept readily accessible for launching or be stowed so as to float free in the event the vessel sinks.

(c) Each hydrostatic release unit used in a float-free arrangement must be

approved under part 160, subpart 160.062 of this chapter.

(d) Each float-free link used with a buoyant apparatus or with a life float must be certified to meet part 160, subpart 160.073 of this chapter.

§ 28.130 Survival craft equipment.

(a) *General.* Each item of survival craft equipment must be of good quality, effective for the purpose it is intended to serve, and secured to the craft.

(b) *Inflatable liferafts.* Each inflatable liferaft must have one of the following equipment packs as shown by the markings on its container:

- (1) Coastal Service;
- (2) SOLAS B Pack (formerly "Limited Service"); or
- (3) SOLAS A Pack (formerly "Ocean Service").

(c) Each life float and buoyant apparatus must be fitted with a lifeline, pendants, a painter, and a floating electric water light approved under part 161 subpart 161.010 of this chapter.

(d) *Other survival craft.* A vessel must not carry survival craft other than inflatable liferafts, life floats, inflatable buoyant apparatus, or buoyant apparatus, such as lifeboats or rigid liferafts, unless the survival craft and launching equipment comply with the requirements for installation, arrangement, equipment, and maintenance contained in 46 CFR part 94.

§ 28.135 Lifesaving equipment markings.

(a) Except as provided in paragraph (d) of this section, after September 1, 1992, lifesaving equipment carried

aboard a vessel pursuant to the requirements of this subpart of part 25, subpart 25.25 of this chapter must be marked as specified in table 28.135.

(b) Lettering used in lifesaving equipment markings must be in block capital letters.

(c) Retroreflective markings required by this section must be with material approved under part 164, subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution A.658(16).

(d) A wearable personal flotation device must be marked with the name of either the vessel, the owner of the device, or the individual to whom it is assigned.

TABLE 28.135.—LIFESAVING EQUIPMENT MARKINGS

Item	Markings required, name of vessel	Retroreflective material
Wearable personal flotation device (Type I, II, III, or wearable Type V); immersion suit or exposure suit.	See § 28.135(d).....	Type I or Type II.
Ring life buoy.....	X.....	Type II.
Inflatable liferaft.....	See note.....	See note.
Inflatable buoyant apparatus.....	See note.....	See note.
Life float.....	X.....	Type II.
Buoyant apparatus.....	X.....	Type II.
Auxiliary craft.....	X.....	Type II.
EPIRB.....	X.....	Type II.

Note: No marking other than that provided by the manufacturer and the servicing facility is required.

§ 26.140 Operational readiness, maintenance, and inspection of lifesaving equipment.

(a) The master or individual in charge of a vessel must ensure that each item of lifesaving equipment must be in good working order, ready for immediate use, and readily accessible before the vessel

leaves port and at all times when the vessel is operated.

(b) Except for an inflatable liferaft or an inflatable buoyant apparatus less than two years of age, each item of lifesaving equipment, including unapproved equipment, must be maintained and inspected in accordance with:

- (1) Table 28.140;

(2) The servicing procedure under the subpart of this chapter applicable to the item's approval; and

(3) The manufacturer's guidelines.

(c) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant.

(d) An escape route from a space where an individual may be employed or an accommodation space must not be obstructed.

TABLE 28.140.—SCHEDULED MAINTENANCE AND INSPECTION OF LIFESAVING EQUIPMENT

Item	Interval		Regulation
	Monthly	Annually	
Inflatable wearable personal flotation device (Type V commercial hybrid).....		Servicing.....	28.140
Personal flotation devices, exposure suits and immersion suits.....		Inspect, clean and repair as necessary.....	28.140
Buoyant apparatus and life floats.....		Inspect, clean and repair as necessary.....	28.140
Inflatable liferaft.....		Servicing.....	28.140
Inflatable buoyant apparatus.....		Servicing.....	28.140
Hydrostatic release.....		Replace on or before expiration date.....	28.140
Disposable hydrostatic release.....		Replace.....	28.140
Undated batteries.....		Replace on or before expiration date.....	25.26-5, 28.140
Dated batteries ¹ and other items.....		Test.....	25.26-5

¹ Water activated batteries must be replaced whenever they are used.

§ 28.145 Distress signals.

Except as provided by 28.305, after November 15, 1991, each vessel must be equipped with the distress signals specified in table 28.145.

TABLE 28.145.—DISTRESS SIGNALS

Area	Devices required
Ocean, more than 50 miles from coastline.	3 parachute flares, approval series 46 CFR 160.138; plus 6 hand flares, approval series 46 CFR 160.121; plus 3 smoke signals, approval series 46 CFR 160.122.
Ocean, 3-50 miles from the coastline; or more than 3 miles from the coastline on the Great Lakes.	3 parachute flares, approval series 46 CFR 160.138, or 160.036; plus 6 hand flares, approval series 46 CFR 160.121 or 160.021; plus 3 smoke signals, approval series 46 CFR 160.122, 160.022, or 160.037.

TABLE 28.145.—DISTRESS SIGNALS—Continued

Area	Devices required
Coastal waters, excluding the Great Lakes; or within 3 miles of the coastline on the Great Lakes.	Night visual distress signals consisting of one electric distress light, approval series 46 CFR 161.013 or 3 approved flares; plus Day visual distress signals consisting of one distress flag, approval series 46 CFR 160.072, or 3 approved flares, or 3 approved smoke signals. ¹

¹ If flares are carried, the same 3 flares may be counted toward meeting both the day and night requirement.

§ 28.150 Emergency position indicating radio beacons (EPIRBs).

Each vessel must be equipped with an emergency position indicating radio beacon (EPIRB) as required by 46 CFR part 25, subpart 25.26.

Note: Each vessel which uses radio communication equipment must have a Ship

Radio Station License issued by the Federal Communications Commission, as set forth in 47 CFR part 60.

§ 28.155 Excess fire detection and protection equipment.

Installation of fire detection and protection equipment in excess of that required by the regulations in this subchapter is permitted provided that the excess equipment does not endanger the vessel or individuals on board in any way. The excess equipment must, at a minimum, be listed and labeled by an independent, nationally recognized testing laboratory and be in accordance with an appropriate industry standard for design, installation, testing, and maintenance.

§ 28.160 Portable fire extinguishers.

(a) Each vessel must meet the requirements of part 25, subpart 25.30 of this chapter.

(b) Each vessel 65 feet (19.8 meters) or more in length must be equipped with the minimum number, location, and type of portable fire extinguishers specified in table 28.160.

TABLE 28.160.—PORTABLE FIRE EXTINGUISHERS FOR VESSELS 65 FEET (19.8 METERS) OR MORE IN LENGTH

Space	Classification	Quantity and location
Safety areas, communicating corridors.....	A-II.....	1 in each main corridor not more than 150 feet (49.2 meters) apart. (May be located in stairways.)
Pilothouse.....	C-I.....	2 in vicinity of exit.
Service spaces, galleys.....	B-II or C-II.....	1 for each 2,500 square feet (269.1 sq. meters) or fraction thereof suitable for hazards involved.
Paint lockers.....	B-II.....	1 outside space in vicinity of exit.
Accessible baggage and storerooms.....	A-II.....	1 for each 2,500 square feet (269.1 sq. meters) or fraction thereof located in the vicinity of exits, either inside or outside the spaces.
Work shops and similar spaces.....	A-II.....	1 outside the space in vicinity of exit.
Machinery spaces; internal combustion propelling machinery.....	B-II.....	1 for each 1,000 brake horsepower or fraction thereof but not less than 2 nor more than 6.
Electric propulsion motors or generator unit of open type.....	C-II.....	1 for each propulsion motor generator unit.
Auxiliary spaces.....	B-II.....	1 outside the space in the vicinity of exit.
Internal combustion machinery.....	B-II.....	1 outside the space in the vicinity of exit.
Electric emergency motors or generators.....	C-II.....	1 outside the space in the vicinity of exit.

§ 28.165 Injury placard.

Each vessel must have posted in a highly visible location accessible to the crew a placard measuring at least 5 inches by 7 inches (127 millimeters by 178 millimeters) which reads:

Notice

Report All Injuries

United States law, 40 United States Code 10603, requires each seaman on a fishing vessel, fish processing vessel, or fish tender vessel to notify the master or individual in charge of the vessel or other agent of the employer regarding any illness, disability, or injury suffered by the seaman when in service to the vessel not later than seven days after the date on which the illness, disability, or injury arose,

Subpart C—Requirements for Documented Vessels That Operate Beyond the Boundary Lines or With More Than 16 Individuals On Board

§ 28.200 Applicability.

Each documented commercial fishing industry vessel that operates beyond the Boundary Lines or that operates with more than 16 individuals on board must meet the requirements of this subpart in addition to the requirements of subparts A and B of this part.

§ 28.205 Fireman's outfits and self-contained breathing apparatus.

(a) Each vessel that operates with more than 49 individuals on board must be equipped with at least two fireman's

outfits stowed in widely separated locations.

(b) Each vessel that uses ammonia as a refrigerant must be equipped with at least two self-contained breathing apparatuses.

(c) A fireman's outfit must consist of one self-contained breathing apparatus with lifeline attached, one flashlight, a rigid helmet, boots, gloves, protective clothing, and one fire axe.

(d) At least one spare air bottle must be provided for each self-contained breathing apparatus.

(e) Each self-contained breathing apparatus must be approved by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health

(NIOSH), have as a minimum a 30 minute air supply, and a full facepiece.

§ 28.210 First aid equipment and training.

(a) Each vessel must have on board a complete first aid manual and medicine chest of a size suitable for the number of individuals on board in a readily accessible location.

(b) *First aid and cardiopulmonary resuscitation (CPR) course certification.* Certification in first aid and CPR must be as described in this paragraph.

(1) First aid—a certificate indicating completion of a first aid course from:

(i) The American National Red Cross "Standard first Aid and Emergency Care" or "Multi-media Standard First Aid" course; or

(ii) A course approved by the Coast Guard under § 10.205(h)(1)(ii) of this chapter.

(2) CPR—A certificate indicating completion of course from:

(i) The American National Red Cross;
(ii) The American Heart Association;
or

(iii) A course approved by the Coast guard under § 10.205(h)(2)(iii) of this chapter.

(c) After September 1, 1993, each vessel that operates with more than 2 individuals on board must have at least 1 individual certified in first aid and at least 1 individual certified in CPR. An individual certified in both first aid and CPR will satisfy both of these requirements.

(d) After September 1, 1993, each vessel that operates with more than 10 individuals on board must have at least 2 individuals certified in first aid and at least 2 individuals certified in CPR. An individual certified in both first aid and CPR may be counted against both requirements.

(e) After September 1, 1993, each vessel that operates with more than 49 individuals on board must have at least 4 individuals certified in first aid and at least 4 individuals certified in CPR. An individual certified in both first aid and CPR may be counted against both requirements.

§ 28.215 Guards for exposed hazards.

(a) Each space on board a vessel must meet the requirements of this section.

(b) Suitable hand covers, guards, or railing must be installed in way of machinery which can cause injury to personnel, such as gearing, chain or belt drives, and rotating shafting. This is not meant to restrict necessary access to fishing equipment such as winches, drums, or gurdies.

(c) Each exhaust pipe from an internal combustion engine which is within

reach of personnel must be insulated or otherwise guarded to prevent burns.

§ 28.225 Navigational Information.

(a) Each vessel must have at least the following navigational information on board:

(1) Marine charts of the area to be transited, published by the National Ocean Service, Defense Mapping Agency Hydrographic/Topographic Center, U.S. Army Corps of Engineers, or a river authority that—

(i) Are of a large enough scale and have enough detail to make safe navigation of the area possible; and
(ii) Are currently corrected.

(2) For the area to be transited, a currently corrected copy of, or applicable currently corrected extract from, each of the following publications:

(i) U.S. Coast Pilot; and
(ii) Coast Guard Light List.

(3) For the area to be transited, the current edition of, or applicable current extract from, each of the following publications:

(i) Tide tables published by the National Ocean Service; and
(ii) Tidal current tables published by the National Ocean Service, or river current publication issued by the U.S. Army Corps of Engineers or a river authority.

(b) Each vessel of 39.4 feet (12 meters) or more in length that operates shoreward of the COLREG Demarcation Lines, as set forth in 33 CFR part 80, must carry on board and maintain for ready reference a copy of the Inland Navigation Rules, as set forth in 33 CFR chapter 1, subchapter E.

§ 28.230 Compasses.

Each vessel must be equipped with an operable magnetic steering compass with a compass deviation table at the operating station.

§ 28.235 Anchors and radar reflectors.

(a) Each vessel must be fitted with an anchor(s) and chain(s), cable, or rope appropriate for the vessel and the waters of the intended voyage.

(b) Except for a vessel rigged with gear that provides a radar signature from a distance of 6 miles, each nonmetallic hull vessel must have a radar reflector.

§ 28.240 General alarm system.

(a) Except as provided in paragraph (f) of this section, after September 1, 1992, each vessel with an accommodation space or a work space which is not adjacent to the operating station, must have an audible general alarm system with a contact-maker at the operating station suitable for

notifying individuals on board in the event of an emergency.

(b) The general alarm system must be capable of notifying an individual in any accommodation space or work space where they may normally be employed.

(c) In a work space where background noise makes a general alarm system difficult to hear, a flashing red light must also be installed.

(d) Each general alarm bell and flashing red light must be identified with red lettering at least 1/8 inch (13 millimeters) high as follows:

Attention

General Alarm—When Alarm Sounds Go to Your Station.

(e) A general alarm system must be tested prior to operation of the vessel and at least once each week thereafter.

(f) A public address system or other means of alerting all individuals on board may be used in lieu of a general alarm system provided it complies with paragraphs (b), (c), and (e) of this section and can be activated from the operating station.

§ 28.245 Communication equipment.

(a) Except as provided in paragraphs (b) through (e) of this section, each vessel must be equipped as follows.

(1) Each vessel must be equipped with a VHF radiotelephone capable of transmitting and receiving on the frequency or frequencies within the 156–162 MHz band necessary to communicate with a public coast station or U.S. Coast Guard station serving the area in which the vessel is operating.

(2) Each vessel that operates more than 20 miles from the coastline, in addition to the VHF radiotelephone required by paragraph (a)(1) of this section, must be equipped with a radiotelephone transceiver capable of transmitting and receiving on frequencies in the 2–4 MHz band necessary to communicate with a public coast station or U.S. Coast Guard station serving the area in which the vessel is operating.

(3) Each vessel that operates more than 100 miles from the coastline, in addition to the communication equipment required by paragraph (a)(1) of this section must be equipped with a radiotelephone transceiver capable of transmitting and receiving on frequencies in the 2–27.5 MHz band necessary to communicate with a public coast station or U.S. Coast Guard station serving the area in which the vessel is operating.

(4) Each vessel that operates in waters contiguous to Alaska where no public coast station or U.S. Coast Guard

station is within communications range of a VHF radio transceiver operating on the 150-102 MHz band or the 2-4 MHz band, in addition to the VHF radio communication equipment required by paragraph (a)(1) of this section, must be equipped with a radiotelephone transceiver capable of transmitting and receiving on frequencies in the 2-27.5 MHz band necessary to communicate with a public coast station or a U.S. Coast Guard station serving the area in which the vessel is operating.

(b) A single radio transceiver capable of meeting the requirements of paragraphs (a)(2) and (3), or paragraphs (a)(2), (J), and (4) of this section, is acceptable.

(c) Satellite communication capability with the station servicing the area in which the vessel is operating is acceptable as an alternative to the requirements of paragraphs (a)(2), (a)(3), or (a)(4) of this section.

(d) A cellular telephone capable of communicating with a public coast station or a U.S. Coast Guard station serving the area in which the vessel is operating is acceptable as an alternative to the requirements of paragraphs (a)(2), (a)(3), or (a)(4) of this section.

(e) A radiotelephone transceiver installed on board a vessel before September 15, 1991, capable of transmitting and receiving on frequencies on the 4-20 MHz band may continue to be used to satisfy the requirements of paragraphs (a)(3) and (a)(4) of this section.

(f) The principle operating position of the communication equipment must be at the operating station.

(g) Communication equipment must be installed to ensure safe operation of the equipment and to facilitate repair. It must be protected against vibration, moisture, temperature, and excessive currents and voltages. It must be located so as to minimize the possibility of water intrusion from windows broken by heavy seas.

(h) Communication equipment must comply with the technical standards and operating requirements issued by the Federal Communications Commission, as set forth in 47 CFR part 80.

Note: Each vessel which uses radio equipment to meet the communication requirements of this section must have a Ship Radio Station License issued by the Federal Communications Commission, as set forth in 47 CFR part 80.

(i) All communication equipment must be provided with an emergency source of power that complies with § 23.375.

§ 28.250 High water alarms.

On a vessel 36 feet (11.8 meters) or more in length, a visual and audible

alarm must be provided at the operating station to indicate high water level in each of the following normally unattended spaces:

(a) A space with a through-hull fitting below the deepest load waterline, such as the lazarette;

(b) A machinery space bilge, bilge well, shaft alley bilge, or other space subject to flooding from sea water piping within the space; and

(c) A space with a non-watertight closure, such as a space with a non-watertight hatch on the main deck.

§ 28.255 Bilge pumps, bilge piping, and dewatering systems.

(a) Each vessel must be equipped with a bilge pump and bilge piping capable of draining any watertight compartment, other than tanks and small buoyancy compartments, under all service conditions. Large spaces, such as engine rooms must be fitted with more than one suction line.

(b) In addition to the requirements of paragraph (a) of this section, a space used in the sorting or processing of fish in which water is used must be fitted with dewatering system capable of dewatering the space under normal conditions of list and trim at the same rate as water is introduced. Pumps used as part of the processing of fish do not count for meeting this requirement. The dewatering system must be interlocked with the pump(s) supplying water to the space, so that in the event of failure of the dewatering system, the water supply is inactivated.

(c) Except as provided by paragraph (f) of this section, each vessel 79 feet (24 meters) or more in length must be equipped with a fixed, self-priming, powered, bilge pump connected to a bilge manifold.

(d) If a bilge pump required by paragraph (a) of this section is portable, it must be provided with a suitable suction hose of adequate length to reach the bilges of each watertight compartment it must serve and with a discharge hose of adequate length to ensure overboard discharge. A portable pump must be capable of dewatering each space it serves at a rate of at least 2 inches (51 millimeters) of water depth per minute.

(e) Except for a fire pump required by § 28.315, a bilge pump may be used for other purposes.

(f) Except where an individual pump is provided for a separate space or for a portable pump, each individual bilge suction line must be led to a manifold. Each bilge suction line must be provided with a stop valve at the manifold and a check valve at some accessible point in

the bilge line to prevent unintended flooding of a space.

(g) Each bilge suction line and dewatering system suction must be fitted with a suitable strainer to prevent clogging of the suction line. Strainers must have an open area of not less than three times the open area of the suction line.

(h) Each vessel must comply with the oil pollution prevention requirements of 33 CFR parts 151 and 155.

§ 28.260 Electronic position fixing devices.

Each vessel 79 feet (24 meters) or more in length must be equipped with an electronic position fixing device capable of providing accurate fixes for the area in which the vessel operates.

§ 28.265 Emergency instruction.

(a) Except as provided in paragraphs (b) and (c) of this section, each vessel must have emergency instructions posted in conspicuous locations accessible to the crew.

(b) The instructions identified in paragraphs (d)(6), (d)(7), (d)(8), and (d)(9) of this section, may be kept readily available as an alternative to posting.

(c) On a vessel which operates with less than 4 individuals on board, the emergency instructions may be kept readily available as an alternative to posting.

(d) The emergency instructions required by this section must identify at least the following information, as appropriate for the vessel:

(1) The survival craft embarkation stations aboard the vessel and the survival craft to which each individual is assigned;

(2) The fire and emergency signal and the abandon ship signal;

(3) If immersion suits are provided, the location of the suits and illustrated instructions on the method for donning the suits;

(4) Procedures for making a distress call, such as:

(i) Make sure your communication equipment is on.

(ii) Select 156.8 MHz (VHF channel 16), 2182 kHz, or other distress frequency used in your area of operation. Note: VHF channel 16 and 2182 kHz on SSB are for emergency and calling purposes only.

(iii) Press microphone button and speaking slowly—clearly—calmly say: "Mayday—Mayday—Mayday"

(iv) Say: "This is the M/V (Insert name of your vessel), (Insert name of your vessel). (Insert name of your vessel), Over."

Commercial Fishing Vessel Safety Act

THE FINAL RULE: A SUMMARY OF THE COMMERCIAL FISHING VESSEL SAFETY ACT

NOTE: The following is a partial summary, for Alaska waters, of the regulations and is not all inclusive. Effective date is September 15, 1991 unless otherwise noted. We strongly recommend fishermen to review the regulations and the checklist themselves. In Alaska call the USCG F/V Safety Coordinator at 1-800-478-7369 and leave your name and address for a free copy of the regulations and boarding officer checklist.

REQUIREMENTS FOR ALL FISHING VESSELS

1. Immersion suit accessible and of an appropriate size for each person onboard. If beyond the Boundary Line retro-tape, PFD light and name (vessel, owner of device, or person assigned) must be on suit (after 9/1/92)
2. Ring Life Buoys (RLB) {orange, 24" diameter, with retro-tape and vessel name}
 - a. Vessels 16' to < 26': Bouyant cushion or RLB plus 60' line minimum.
 - b. Vessel 26' to < 65': RLB plus 60' line minimum.
 - c. Vessel \geq 65': Minimum 3 RLBs one with a 90' line.
3. Survival craft required on documented vessels after 9/1/92 or on state registered vessels after 9/1/95 except those with less than 4 people within 12 miles of shore. Liferrafts with appropriate equipment packs and installed onboard before 9/15/91 are "grandfathered". Under limited conditions "auxiliary craft" may be substituted. F/V less than 36 ft. that have positive flotation and operate within 12 miles of shore are exempt. This section may be subject to future revision.
4. Distress flares if more than 3 miles from shore: 3 parachute flares; 6 handheld flares; 3 smoke flares. Lesser requirements if within 3 miles.
5. Injury placard posted.
6. 406 EPIRB if operating beyond 3 mile Territorial Sea Line. After 9/1/92 must be marked with vessel name.

REQUIREMENTS FOR DOCUMENTED VESSELS WITH MORE THAN 16 PEOPLE ON BOARD OR OPERATING BEYOND THE BOUNDARY LINE

1. Fire extinguisher(s).

2. Two fireman's outfits if more than 49 people on board.
3. Two SCBAs required with spare 30 minute bottles if ammonia refrigeration system on board.
4. First Aid book & equipment. First Aid training required by 9/1/93.
5. Guards for exposed hazards.
6. Unobstructed escape routes.
7. Relevant, up-to-date charts, Coast Pilot, light list, tide & current tables. Maintain charts using Local Notice to Mariners.
8. Compass, anchor, and radar reflector (for nonmetallic hull not providing a signature from 6 miles).
9. General alarm (after 9/1/92).
10. VHF Communication equipment to contact Coast Guard (SSB past 20 nautical miles). See Final Rule.
11. High water alarms if vessel 36 ft. or more, bilge pumps, piping & dewatering systems regardless of length.
12. F/V over 79 ft must have electronic position fixing device.
13. Monthly emergency instruction, drills & orientation.
14. Training in drill instruction. (effective 9/1/94).

REQUIREMENTS FOR F/V WITH KEELS LAID OR CONVERTED AFTER 9/15/91

This section sets standards for the areas of liferaft launching, fire fighting systems, galley hoods, fuel systems, ventilation, electrical standards, radar and depth sounding equipment, deck rails, life lines, and grab rails. See *Final Rule for details*.

REQUIREMENTS FOR STABILITY

Applies to F/Vs more than 79 ft. that has had keel laid or altered after 9/15/91. Sets standards and tests for these vessels. Future rule making will affect this section and smaller F/Vs. See *Final Rule for details*.

continued next page

Continued...

continued from page 5

TRAINING REQUIREMENTS

Applies only to documented F/Vs beyond the boundary line or with more than 16 people onboard (POB).

1. First Aid & CPR (After September 1, 1993) Acceptable certification follows:

- First Aid:
1. American Red Cross
 2. OSHA
 3. USCG approved

- CPR:
1. American Red Cross
 2. American Heart Association
 3. USCG approved

- a. F/V with more than 2 POB must have one person trained in First Aid and CPR (can be same person).
- b. F/V with more than 16 POB needs two trained in First Aid/CPR.
- c. F/V with more than 49 POB needs 4 trained in First Aid/CPR.

2. Instruction, Drills and Safety Orientation:

Master will conduct drills and instruction once a month in the following:

- a. abandoning vessel.
- b. fighting a fire in different locations.
- c. recovering an individual in the water.
- d. minimizing the effects of flooding.
- e. launching survival craft.
- f. donning immersion suits and PFDs.
- g. donning fire clothing and SCBA (if so equipped).
- h. radio distress calls and visual distress signals.
- i. activating the general alarm.
- j. reporting inoperative alarm systems.

3. Drill Instruction. After Sept. 1, 1994 no person may conduct the drills or provide instruction without that person having been trained in the proper procedures for conducting the activity.

4. Safety Orientation. The master must insure that a safety orientation is given to each individual onboard that has not received the instruction or participated in the drill.

5. Emergency Instructions. Instructions must be posted or be kept readily available (F/V with less than 4 people) covering:

- a. survival craft embarkation stations.
 - b. fire, emergency and abandon ship signal.
 - c. location of immersion suits & illustration of donning procedure.
 - d. procedures for making a distress call.
 - e. essential action to be taken in an emergency.
 - f. procedures for rough weather or conditions.
 - g. procedures for anchoring.
 - h. persons overboard procedures.
 - i. fire fighting procedures.
- ### 6. Master must insure that lifesaving equipment is in good condition and readily available for immediate use.

SPECIAL NOTES

Vessels whose liferafts qualify to be grandfathered should keep a copy of receipt with date of purchase onboard. *See Final Rule for details.*

Grandfathered liferafts must still follow the yearly repacking schedule and be repacked by a certified repacker (repacker must be certified by manufacturer of raft).

Be sure to do the following and record in your log book:

1. Monthly Drills.
2. Monthly EPIRB test.
3. Inspect all other survival gear regularly.

Refer to the Final Rule to clarify questions or call your local USCG Fishing Safety Coordinator. In Alaska call 1-800-478-7369.

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UNITED FISHERMEN OF ALASKA

211 4th Street, Suit 112
Juneau, AK 99801
907-586-2820
Fax# 907-463-2545

February 4, 1992

MEMBER ASSOCIATIONS

Alaska Crab Coalition
Alaska Independent Fishermen's
Marketing Association
Alaska Longline Fisherman's
Association
Alaska Trollers Association
Bering Sea Fishermen's Association
Bristol Bay Driftnetters Association
Concerned Area 'M' Fishermen
Cook Inlet Aquaculture Association
Copper River Fishermen's Cooperative
Cordova District Fishermen United
Kona Peninsula Fishermen's Association
North Pacific Fisheries Association
Northern Southeast Regional
Aquaculture Association
Peninsula Marketing Association
Petersburg Vessel Owners Association
Prince William Sound
Aquaculture Association
Prince William Sound Seiners Association
Seafood Producers Cooperative
Southeast Alaska Seiners
Southern Southeast Regional
Aquaculture Association
United Cook Inlet Drift Association
United Southeast Alaska Gillnetters
Western Alaska Cooperative
Marketing Association

The Honorable Dick Eliason
Alaska State Senate
Post Office Box V
Juneau, Alaska 99811

RE: Senate Bill 358

Dear Senator Eliason:

On behalf of the United Fishermen of Alaska, I would like to support the proposed amended language to AS 11.46.130(a) which would elevate the theft of certain safety and survival equipment from a commercial fishing vessel to theft in the second degree, as well as other proposed language under SB 358.

It has come to my attention, over the past several years, that theft of safety and survival equipment has become an increasing problem. Fortunately, at least in one instance of which I am aware, the theft of survival suits was discovered prior to an emergency situation. This equipment, for purposes of accessibility in time of distress, is often stored outside of a locked cabin or storage locker. This, unfortunately, also makes this equipment more readily accessible to theft. Also, life rafts and emergency locator beacons are installed in such a manner that they cannot be secured from theft.

Our organization wholeheartedly supports your sponsorship and efforts on behalf of this worthwhile legislation. It is our sincere hope that the proposed statutory change will act as a deterrent to those unscrupulous individuals who would thoughtlessly remove survival equipment from a commercial fishing vessel and jeopardize fishermen's lives.

Very truly yours,

Greg Seider
Executive Director

GS:ph1

✓ cc: Senator Rick Halford
Senator Fred Zharoff

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: GRANT H. TRASK
TITLE: DIRECTOR, SEAFOOD PRODUCER'S CO-OP
ADDRESS: BOX 400 SECOND STREET
CITY: PETERSBURG ZIP: 99833
PHONE: 772-3775

BILL NO: SB 358

SUBJECT: THEFT OF BOAT SAFETY/SURVIVAL EQUIP
MESSAGE: THANK YOU FOR YOUR BILL INTRODUCING PENALTIES FOR THE THEFT SURVIVAL AND SAFETY EQUIPMENT. THE 350 MEMBERS OF SEAFOOD PRODUCER'S CO-OPERATIVE SUPPORT YOU. OUR LIVELIHOOD AND PROFESSIONALISM DEPENDS ON KEEPING ALL ASPECTS OF OUR BUSINESSES INTACT AND THIS BILL SHOULD SERVE AS DETERRANT TO ANYONE INCLINED TO JEOPARDIZE THIS.

FOMID: 15103124
DATE: 92/02/03
TIME: 10:31:24
LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVE SENATORS

TAYLOR

HALFORD
ZHAROFF

