

SB

19

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 12, 1993

FURTHER REFERRALS:

Date of Committee Action: 1/25/94

The FINANCE Committee considered:

CSSB 19(FIN) am

CS FOR SENATE BILL NO. 19(FIN) am

CRIME OF CONSPIRACY

"An Act relating to the crime of conspiracy."

RECOMMENDATIONS:

be replaced with HCS CSSB 19 (FIN) | | the same title

[] have attached amendments(s) | | a new title

[] have attached amendments(s)

do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Due)

fiscal impact (2) DOA, DOC, COURT [] fiscal note(s) _____

zero fiscal note Law, PS [] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Donald J. Lanson</i>	<input checked="" type="checkbox"/>	<i>Mike Navarre</i>		<input checked="" type="checkbox"/>	
<i>Mark Hanley</i>	<input checked="" type="checkbox"/>	<i>Kay Brown</i>			<input checked="" type="checkbox"/>
<i>John Theriault</i>	<input checked="" type="checkbox"/>				
<i>Sean Parnell</i>	<input checked="" type="checkbox"/>				
<i>Ben Grussendorf</i>	<input checked="" type="checkbox"/>				
<i>Larry Martin</i>	<input checked="" type="checkbox"/>				

Donald J. Lanson
CHAIRMAN'S SIGNATURE

HOUSE CS FOR CS FOR SENATE BILL NO. 19(FIN)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS HALFORD, Phillips

REPRESENTATIVES Porter, Phillips, Toohey

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
 5 conspiracy if, with the intent to promote or facilitate a serious felony offense, the
 6 offender agrees with one or more persons to engage in or cause the performance of
 7 that activity and the offender or one of the persons does an overt act in furtherance of
 8 the conspiracy. In this section, "overt act in furtherance of the conspiracy" means an
 9 act of such character that it manifests a purpose on the part of the actor that the object
 10 of the conspiracy be completed.

11 (b) If an offender commits the crime of conspiracy and knows that a person
 12 with whom the offender conspires to commit a serious felony offense has conspired
 13 or will conspire with another person or persons to commit the same serious felony
 14 offense, the offender is guilty of conspiring with that other person or persons to

1 commit that crime whether or not the offender knows their identities.

2 (c) In a prosecution under this section, it is a defense that the defendant was
3 merely present at the time that two or more other persons agreed to engage in or cause
4 the performance of a serious felony offense.

5 (d) In a prosecution under this section, it is not a defense that a person with
6 whom the defendant conspires could not be guilty of the crime that is the object of the
7 conspiracy because of

8 (1) lack of criminal responsibility or other legal incapacity or
9 exemption;

10 (2) belonging to a class of persons who by definition are legally
11 incapable in an individual capacity of committing the crime that is the object of the
12 conspiracy;

13 (3) unawareness of the criminal nature of the conduct in question or of
14 the criminal purpose of the defendant; or

15 (4) any other factor precluding the culpable mental state required for
16 the commission of the crime.

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

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

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

30 (h) Conspiracy is

31 (1) an unclassified felony if the object of the conspiracy is murder in

1 the first degree:

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

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

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

8 (i) In this section, "serious felony offense" means an offense

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

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

13 Sec. 11.31.125. DURATION OF CONSPIRACY FOR PURPOSES OF
14 LIMITATIONS OF ACTIONS. (a) For purposes of applying AS 12.10 governing
15 limitations of actions, in a prosecution under AS 11.31.120, the statute of limitations
16 begins to run

17 (1) when all the crimes that are serious felony offenses that are its
18 objects are completed;

19 (2) if all the crimes that are its objects are not completed, when the last
20 overt act in furtherance of the conspiracy is done by the defendant or any of the other
21 coconspirators; or

22 (3) when the defendant informs law enforcement authorities of the
23 existence of the conspiracy and of the defendant's participation in it.

24 (b) In this section, "overt act in furtherance of the conspiracy" has the meaning
25 given in AS 11.31.120.

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

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

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

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

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

6 (d) This section does not bar inclusion of multiple counts in a single
7 indictment or information charging commission of a crime defined by AS 11.31.100 -
8 11.31.120 [AS 11.31.100 OR 11.31.110] and commission of the crime that is the
9 object of the attempt, conspiracy, or solicitation.

10 * Sec. 5. AS 12.55.125(b) is amended to read:

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

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 19(FIN) AM

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act relating to the crime of BRU: Trial Courts
conspiracy Components: _____
 Sponsor: Halford/Porter
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	121.1	121.1	121.1	121.1	121.1	121.1
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	121.1	121.1	121.1	121.1	121.1	121.1

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)


1002 Federal Receipts						
1003 GF Match						
1004 GF	121.1	121.1	121.1	121.1	121.1	121.1
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	121.1	121.1	121.1	121.1	121.1	121.1

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 (FY 94) cost: \$ None

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

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Agency: Alaska Court System Date: 01/12/94

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 01/12/94
 Agency: Alaska Court System

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court SystemFiscal AnalysisCSSB 19(FIN) AM

This bill creates a new crime of conspiracy to promote or facilitate a serious felony. 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

CSSB 19(FIN) AM

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge Anchorage, 12 months, PPT	\$24,150	\$16,841	\$40,991
Pro Tem Superior Court Judge Fairbanks, 6 months, PPT	12,251	8,439	20,690
Pro Tem Superior Court Judge Juneau, 6 months, PPT	12,075	8,420	20,495
In-Court Clerk, Anchorage, Range 12A, 12 months, PPT	27,108	11,816	38,924
			<u>\$121,100</u>

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 19 (FIN) am

Revision Date: 12/31/94 Dept. Affected: Corrections
 Title: An Act relating to the crime of BRU: all
conspiracy Component: all
 Sponsor: Sen. Halford
 Requestor: House Finance COMPONENT SERIAL NO. 694 - 1884

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	772.5	772.5	772.5	772.5	772.5	772.5
TOTAL OPERATING	772.5	772.5	772.5	772.5	772.5	772.5

CAPITAL EXPENDITURES	1,800.0	0	0	0	0	0
-----------------------------	---------	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
-------------------------------	---	---	---	---	---	---

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2,572.5	772.5	772.5	772.5	772.5	772.5
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	2,572.5	772.5	772.5	772.5	772.5	772.5

Estimate of any current year (FY94) cost: \$ 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

ANALYSIS:

(Attach a separate page if necessary)

Please see the attached fiscal analysis.

Prepared by: Diane Schenker, Special Asst. to Commissioner Phone: 465-3315
 Division: Office of the Commissioner Date: 12/31/93
 Approved by Commissioner: J. Frank Prewitt, Jr. Date: _____
 Agency: Shirley Mearns for

PREPARED TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For distribution information, call the Governor's Legislative Office

The conspiracy law would apply to unclassified and Class A crimes against persons, and to unclassified, Class A, and Class B controlled substances crimes. The Department of Law expects the new law to increase prosecution efficiency in several ways:

1. Defendants will be more likely to cooperate with the state in order to get reduced charges instead of going to trial;
2. Multiple defendants can be tried jointly instead of in separate trials; and
3. More evidence can be presented during trials which may be more persuasive to juries to convict.

When prosecution becomes more efficient, more defendants are convicted and prison populations increase. With the efficiency of prosecution resulting from the conspiracy law, prosecution for unrelated felonies may also increase, since some felonies are deferred for prosecution now due to lack of resources. Because such an effect has not been quantified in this fiscal note, the assumptions and costs listed are considered to be conservative.

Assumptions

1. Conspiracies to commit murder, kidnapping, or other crimes against persons are assumed to happen fairly rarely and unpredictably. However, even a small increase in convictions for such crimes will impact correctional populations due to the length of sentences for such serious crimes. Although only 220 offenders were sentenced to prison for such offenses in 1992, the population in prison for committing such offenses was 848, on June 30, 1993. The department conservatively assumes a one percent increase in the number of prisoners incarcerated for such offenses as a result of the conspiracy law.
2. Based upon information from the Department of Law, it is assumed that the greatest impact of the conspiracy law will be more effective prosecution of controlled substance offenses. In 1992, 127 offenders were sentenced to prison for unclassified, Class A, and Class B controlled substance offenses. On June 30, 1993, there were 97 prisoners incarcerated for these offenses. The department assumes a ten percent increase in this population as a result of this law.
3. The FY93 statewide average cost for a bed in a correctional facility was \$98 per day. This figure includes state correctional beds as well as Community Residential Center (CRC) beds operated on contract. It is assumed that prisoners convicted of controlled substance offenses are likely to serve some portion of their time in CRC beds. (This fiscal note revises last year's assumption that the entire increase in prison population could be diverted to lower-cost CRC beds. During FY94, the department has increased the number and use of CRC beds and has

Fiscal Note/DOC

CSSB 19 (FIN) 271

Revised December 31, 1993

Page 3 of 4

altered policies in order to divert as many prisoners to such beds as is possible without unduly jeopardizing public safety, but prison populations remain over emergency capacity.)

4. The FY93 statewide average cost for a bed in a state correctional center was \$113 per day. It is assumed that offenders convicted of conspiracy relating to unclassified or Class A crimes against persons would be most likely to serve most of, or almost all of, their sentence in a state correctional center instead of a CRC bed, especially the first six years reflected on the fiscal note.

5. Prisoners incarcerated for conspiracy in relation to unclassified and Class A felonies against persons are likely to serve six years or more in a correctional center. Therefore, it is assumed that no additional costs for probation/parole supervision are likely to be incurred during the period reflected on the fiscal note for these types of offenders. Prisoners convicted of conspiracy in relation to controlled substance offenses may be released within a year or less, and can be expected to serve at least a period of mandatory parole (equal to statutory good time deducted from the period of incarceration) following incarceration. Therefore, a ten percent increase in probation/parole caseloads is assumed for this population. On June 30, 1993, there were 346 offenders supervised on probation/parole for unclassified, Class A, and Class B controlled substances offenses.

6. The FY93 statewide average cost of supervision on probation or parole is approximately \$6 per day.

7. The average cost for construction of a prison bed in Alaska is \$100,000 per bed.

8. The correctional system cannot absorb any additional offenders without additional resources. The system has operated over emergency capacity throughout the past year, in spite of adding CRC beds. Even when all aspects of the current population management plan are accomplished, only the current overpopulation will be addressed, not including any additional numbers of inmates. In addition to posing safety hazards, operation over emergency capacity may result in fines of up to \$1,000 per day if the department is found in contempt of court for violation of population capacity levels.

9. Because a number of crime bills are being considered during this session, it is difficult to predict the total number of beds by which the prison system may need to be increased, and therefore to predict how such beds would be added: through new facility construction, facility modification, or contracting. Therefore, the operating expenses are reflected under "miscellaneous" and no estimate is available as to the number of state positions which would need to be added.

Operating Expenses

A total of 848 prisoners are incarcerated for unclassified and Class A felonies against persons, or a total of 309,520 prisoner-days per year. A one percent increase will add 3,095 prisoner-days per year.

3,095 prisoner-days X \$113 per day = \$ 349,735 per year

A total of 97 prisoners are incarcerated for unclassified, Class A, and Class B controlled substance felonies, or a total of 35,405 prisoner-days per year. A ten percent increase will add 3,541 prisoner-days per year.

3,541 prisoner-days X \$98 per day = \$ 347,018 per year

A total of 346 offenders were supervised on probation or parole, on June 30, 1993, for unclassified, Class A, and Class B controlled substance offenses, or 126,290 offender-days per year. A ten percent increase will add 12,629 offender-days per year.

12,629 offender-days X \$6 per day = \$75,774 per year

Total operating expenses per year = \$ 772,527

Capital Expenses

In order to absorb the 6,636 prisoner-days estimated above, 18 additional beds must be added to the correctional system.

18 beds X \$100,000 per bed = \$ 1,800,000

The cost of construction for additional beds can be avoided by contracting for beds. However, there are presently no contract beds available in Alaska to house prisoners whose custodies are higher than minimum.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 19 (Fin) am

Revision Date: _____

Department Affected: Administration

Title: 'An Act relating to the crime of Conspiracy'

BRU: AK Public Defender Agency

Component: AK Public Defender Agency

Sponsor: Senator Haiford

COMPONENT SERIAL NO. 3540

Requestor: _____

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	352.3	362.90	373.8	385.0	396.6	408.5
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	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	407.3	413.5	426.0	438.8	452.0	465.5
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUNDING SOURCE:

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	407.3	413.5	426.0	438.8	452.0	465.5
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	407.3	413.5	426.0	438.8	452.0	465.5

Estimate of any current year (FY 94) cost: \$ _____

POSITIONS:

FULL-TIME	6.0	6.0	6.0	6.0	6.0	6.0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

Prepared by: John Salemi, Public Defender

Phone: 279-7541

Division: Public Defender Agency

Date: 12/13/93

Approved by Commissioner: Nancy Bear Usery

Date: 12/15/93

Agency: Department of Administration

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

CSSB 19Fiscal Considerations

This change in law would increase the pool of potential criminal defendants and increase prosecutions and costs. Multiple co-defendant cases could be charged even when a completed crime or substantial step toward one is absent. Investigation in defense of conspiracy cases is extremely time consuming and labor intensive. Cases filed charging conspiracy on the federal level and in other states routinely involve substantial attorney time, particularly for preparation of pre-trial motions. The Public Defender Agency will be appointed in a large percentage of any conspiracy prosecutions just as it is currently appointed in large numbers of the underlying types of object crimes. It must be assumed that numerous prosecutions will be pursued under this statute because of the current frequency of arrests for the substantive offenses involved and the added flexibility given prosecutors by virtue of a conspiracy law. The Public Defender Agency will only be permitted, due to legal conflict of interests rules, to represent a single conspirator. The greater impact will fall to the Office of Public Advocacy, which will be obligated to provide representation from the remaining defendants in each conspiracy prosecution.

Consistent with our analysis of the fiscal impact of conspiracy statutes, it is worth noting that three years ago the Department of Law submitted this discussion of a conspiracy proposal only for drug offenses.

Given the limits set by the bill [SB 16 - 1989 Legislative Session] and the broad authority provided by existing law for the prosecution of persons involved in drug trafficking, enforcement activities undertaken as a result of this bill will be complicated and expensive. The focus of enforcement actions taken under this bill will be on major narcotics rings.

Investigation and prosecution of large-scale drug cases is extremely time-consuming and labor intensive. Major narcotics rings are carefully planned and organized, and it requires at least the same degree of planning and organization to detect, investigate, infiltrate, and ultimately break the rings. A conspiracy law will not decrease the amount of work involved in pursuing drug traffickers, rather conspiracy prosecutions will require the investment of significant time and effort on the part of the state prosecutors.

Fiscal Note SB 16, Department of Law, January 26, 1989.

This conspiracy bill will be extremely costly to litigate from both a prosecution and defense perspective.

Due to the breadth of the substantive target crimes of this conspiracy statute and due to the fact that the Department of Law's investigative activity will likely focus on more urban areas, the Public Defender Agency is requesting one experienced attorney, a paralegal, 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.

BUDGET ANALYSIS - CSSB 19

100: Attorney IV	(Anchorage)	83.1	
Attorney IV	(Fairbanks)	94.0	
Investigator II	(Anchorage)	51.8	
Investigator II	(Fairbanks)	53.7	
Clerk/Typist	(Anchorage)	33.3	
Clerk/Typist	(Fairbanks)	34.3	
			352.3
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		407.03

Position Title Attorney IV		No. of Positions 2	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 24.0	Location EBA - FBX		Election District 20 - 7
TYPE OF EXPENDITURE		Amount		
Salary	131,100	Justification 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	46,002			
Premium Pay				
Other				
Total Personal Services	177,102			
Travel	10,000			
Contractual	19,000			
Commodities	2,000			
Equipment	3,000			
Other				
Total Cost	211,102			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.E. Match	1003			
General Fund	1004	211,102		
IA Receipts	1007			
CIP Receipts	1061			
Other				

**Request For
New Position**

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

FY 95

Page 1 of 3
 Revised Date: _____

Position Title Investigator		No. of Positions 2	Range / Step 16/A	Org Unit GGU	
Time Status PFT	Staff Months 24/0	Location EBA - FBX		Election District 20 - 7	
TYPE OF EXPENDITURE		Annual			
Salary	74,340	Justification These investigators will be based in Anchorage and Fairbanks but will provide services throughout the entire state.			
Benefits	31,185				
Premium Pay					
Other					
Total Personal Services	105,525				105,525
Travel					5,000
Contractual					7,000
Commodities					1,000
Equipment					1,500
Other					
Total Cost		120,025			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004	120,025			
IA Receipts	1017				
CIP Receipts	1011				
Other					

**Request For
New Position**

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

FY 95

Page 2 of 3
 Revised Date: _____

P.07
 FAX NO. 9072695476
 PUBLIC DEFENDER AGENCY
 DEC-13-93 MON 12:27

Position Title Clerk/Typist III		No. of Positions 2	Range / Step 8/A	Barg. Unit GGU
Time Status PFT	Staff Months 24.0	Location EBA - FBX		Election District 7 - 20
TYPE OF EXPENDITURE		Amount		
Salary	44,868			
Benefits	22,918			
Premium Pay				
Other				
Total Personal Services	67,786	67,786		
Travel		-0-		
Contractual		4,000		
Commodities		1,000		
Equipment		1,500		
Other				
Total Cost		74,286		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	74,286		
IA Receipts	1007			
CIP Receipts	1061			
Other				
Justification These two support staff positions will be based in Anchorage and Fairbanks.				

**Request For
 New Position**

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

FY 95

Page 3 of 3
 Revised Date: _____

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB19(FIN)(am)

Revision Date: _____
Title: 'An Act relating to the
crime of conspiracy.'
Sponsor: Sen. Halford. Phillis
Requestor: House Finance

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	120.0	123.6	127.3	131.1	135.0	139.0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	381.1	392.5	404.3	416.4	428.9	441.8
SUPPLIES	2.0	2.1	2.2	2.3	2.4	2.5
EQUIPMENT	11.0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	514.1	518.2	533.8	549.8	566.3	583.3

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	514.1	518.2	533.8	549.8	566.3	583.3
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	514.1	518.2	533.8	549.8	566.3	583.3

Estimate of any current year (FY 94) cost: \$ None

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

The bill creates the new offense of conspiracy whose prosecution will have a dramatic fiscal impact on the Office of Public Advocacy (OPA). The following analysis will deal solely with the fiscal ramifications of the adoption of the individual sections of the proposed bill. (continued)

Prepared by: Brant McGee
Division: Office of Public Advocacy

Phone: 274-1684
Date: 12/9/93

Approved by Commissioner: Nancy Bear Usura
Agency: Administration

Date: 12/13/93

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSE19(FIN)(am)

ANALYSIS: (continued)

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

The Office of Public Advocacy is responsible for providing representation for those with whom the Alaska Public Defender Agency has a conflict of interest. The great majority of defendants prosecuted under conspiracy laws will be found by the court to be indigent and qualified for Public Defender and OPA services. By definition, because the statute is designed to prosecute two or more people, the Office of Public Advocacy will be responsible for providing representation to one or more alleged co-conspirators in the great majority of the cases prosecuted under this new section. For example, if the Alaska Public Defender Agency is appointed to represent defendant number one in a conspiracy case, OPA will be appointed to provide representation, probably by a staff attorney, to defendant number two, and through contract counsel, to all other 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 pretrial motions. Due to the fact that the Department of Law investigation activity will probably focus on urban areas, the Office of Public Advocacy is requesting one experienced attorney and a legal secretary in Anchorage to handle representation of clients charged under this bill. Because the staff attorney can represent but one co-defendant in a given case, the Office of Public Advocacy 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. The Department of Law has not estimated the number of prosecutions it will initiate during FY95 or subsequent years under the new conspiracy statute. The projected \$381,100 in contract costs is thus based on the assumption that the Office of Public Advocacy 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 Public Defender Agency will each be paying for one attorney, while the Office of Public Advocacy will be responsible for provide counsel to all of the remaining co-defendants.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 19(FIN)am

Revision Date: December 13, 1993

Department Affected: Department of Law

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

BRU: Prosecution

Sponsor: Senator Halford

Component: All

Requestor: House Finance

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

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

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services Division

Date: December 13, 1993

Approved by Commissioner: Richard I. Pegues / Charles E. Cole, Attorney General

Agency: Department of Law

Date: December 13, 1993

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 19 (FIN)am

ANALYSIS CONTINUATION:

The Senate Finance Committee substitute for SB 19 (as amended) clarifies the original bill by adding definitions and sets out the duration of the proposed criminal act for purposes of limitations of actions. Consequently, our comments of February 5, 1993 repeated below, remain unchanged.

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 offenses against a person under AS 11.41, punishable as unclassified or class A felonies, and to offenses involving controlled substance, under AS 11.71, punishable as unclassified, class A, or class B felonies.

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, it is unlikely that the conspiracy law (which requires proof of an agreement to commit the crime) will result in significantly 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.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSSB 19(EIN)

Revision Date: 12/13/93 Dept. Affected: Public Safety
 Title: "An Act relating to the crime of conspiracy" BRU: Alaska State Troopers
 Sponsor: Senator Halford Component: Derachments
 Requestor: House Finance COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: K Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 12/13/93
 Approved by Commissioner: *Richard I. Burton* Date: 12/13/93
 Agency: Richard I. Burton, Dept. of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

Fair (1)

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CS3B 19(FIN) am

Page 3, line 21, through page 4, line 4:

Delete all material and insert:

"* Sec. 2. AS 11.31.140 is amended to read:

Sec. 11.31.140. MULTIPLE CONVICTIONS BARRED. (a) It is not a defense to a prosecution under AS 11.31.100 - 11.31.120 [AS 11.31.100 OR AS 11.31.110] that the crime the defendant attempted to commit, solicited to commit, or conspired to commit [THAT IS THE OBJECT OF THE ATTEMPT OR SOLICITATION] was actually committed pursuant to the attempt, solicitation, or conspiracy [OR SOLICITATION].

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

(c) A person may not be convicted on the basis of the same course of conduct of both

(1) a crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100 OR 11.31.110]; and

(2) a [THE] crime that is an [THE] object of the attempt, conspiracy, or solicitation.

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

Renumber the following bill section accordingly.

Failed

AMENDMENT

2

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSSB 19(FIN) am

Page 1, line 5, following "offense,":

Insert "(1)"

Page 1, line 7, following "activity":

Insert "and communicates the agreement to the other person or persons;"

Page 1, line 7, following "and":

Insert "(2)"

Attachment #1
Brown
1/24/94

**Summary of MKB Amendment #5
to CSSB 19(FIN) am, Conspiracy**

In the current CS language, page 3, line 10, DURATION OF CONSPIRACY FOR PURPOSES OF LIMITATIONS OF ACTIONS, the statute of limitations on the crime of conspiracy would commence only when the crimes are completed or the "last overt act" is done by the defendant or co-conspirators.

The statute of limitations (AS 12.10) does not apply to murder. There is also no limitation on prosecution for sexual assault or abuse of a minor. In the case of other serious felonies against persons (AS 11.41.120--530) as well as Arson (AS 11.46.400), the time limit on prosecution is 10 years. Less serious offenses have a limitation of 5 years. Three year extensions are provided for some offenses by public officials.

Subsection (a) of the proposed amendment maintains completion of serious felony crimes as point of departure for statute of limitations and adds abandonment of the agreement by all defendants. Also, in the case of individual defendants through advising co-conspirators of the abandonment or informing law enforcement of the conspiracy.

Subsection (b) presumes the conspiracy has been abandoned if neither the defendant nor any co-conspirator does an overt act during the statute of limitations.

Current bill—a group comes together and plans a crime. Over time all but one "abandon" the conspiracy (under (1) or (2)). 11 years later, one commits crime by

himself. All conspirators who previously abandoned, but did not satisfy 11.31.120(e) could be prosecuted.

Amendment—the statute of limitations begins ticking for each individual defendant when they “abandon” the conspiracy under (1) or (2). If no one acts in furtherance of the conspiracy within the statute of limitations then it is presumed to be abandoned.

#5

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSSB 19(FIN) am

Page 3, line 10, through line 20:

Delete all material and insert:

"Sec. 11.31.125. DURATION OF CONSPIRACY FOR PURPOSES OF LIMITATIONS OF ACTIONS. (a) For purposes of applying AS 12.10 governing limitations of actions, in a prosecution under AS 11.31.120, a conspiracy terminates

(1) when all the crimes that are serious felony offenses that are its objects are completed;

(2) when the agreement is abandoned by the defendant and by all persons with whom the defendant agreed; or

(3) as to an individual defendant, when

(A) the defendant abandons the agreement by advising the persons with whom the defendant agreed of the defendant's abandonment; or

(B) the defendant informs law enforcement authorities of the existence of the conspiracy and of the defendant's participation in it.

(b) For purposes of (a)(2) of this section, abandonment of an agreement is rebuttably presumed if neither the defendant nor anyone with whom the defendant conspired does an overt act in furtherance of the conspiracy during the applicable period of limitations."

A. D. R. H.

AMENDMENT

#3 5-3

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSSB 19(FIN) am

Page ¹ 2, following line ⁸ 17: after conspiracy

Insert a ~~new subsection to read:~~

~~"(c)~~ In a prosecution under this section, it is a defense that the defendant was merely present at the time that two or more other persons agreed to engage in or cause the performance of a serious felony offense. ~~[if the defendant did not]~~

~~(1) communicate the defendant's agreement to any of the other persons at that time or a later time; and~~

~~(2) do an overt act in furtherance of the conspiracy."~~

Reletter the following subsections accordingly.

Adopt

8-LS0246K.8
Luckhaupt ✓
1/20/94

AMENDMENT 3 - revised

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSSB 19(FIN) am

Page 1, following line 17:

Insert a new subsection to read:

(S) ~~§~~ In a prosecution under this section, it is a defense that the defendant was merely present at the time that two or more other persons agreed to engage in or cause the performance of a serious felony offense ~~if the defendant did not~~

~~(1) communicate the defendant's agreement to any of the other persons at that time or a later time; and~~

~~(2) do an overt act in furtherance of the conspiracy."~~

~~Reletter the following subsections accordingly.~~

1/21/94

Failed

8-LS0246K.5 ✓
Luckhaupt
1/19/94

AMENDMENT 4

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSSB 19(FIN) am

Page 2, following line 17:

Insert a new subsection to read:

"(e) In a prosecution under this section, it is an affirmative defense that, in order to obtain evidence of the commission of a conspiracy, a public law enforcement official or a person working in cooperation with the official agreed with the defendant to engage in or cause the performance of the offense, and the defendant and the law enforcement official or person working in cooperation with the official were the only persons who conspired to commit the offense."

Reletter the following subsections accordingly.

W/D

AMENDMENT # 5

OFFERED IN THE HOUSE
TO: CSSB 19(FIN) am

BY REPRESENTATIVE BROWN

Page 3, line 10, through line 20:

Delete all material and insert:

"Sec. 11.31.125. DURATION OF CONSPIRACY FOR PURPOSES OF LIMITATIONS OF ACTIONS. (a) For purposes of applying AS 12.10 governing limitations of actions, in a prosecution under AS 11.31.120, a conspiracy terminates

(1) when all the crimes that are serious felony offenses that are its objects are completed;

(2) when the agreement is abandoned by the defendant and by all persons with whom the defendant agreed; or

(3) as to an individual defendant, when

(A) the defendant abandons the agreement by advising the persons with whom the defendant agreed of the defendant's abandonment; or

(B) the defendant informs law enforcement authorities of the existence of the conspiracy and of the defendant's participation in it.

(b) For purposes of (a)(2) of this section, abandonment of an agreement is rebuttably presumed if neither the defendant nor anyone with whom the defendant conspired does an overt act in furtherance of the conspiracy during the applicable period of limitations."

AMENDMENT

12.11.15 #5

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSSB 19(FIN) am

Page 3, line ~~10~~¹³ through line ~~18~~²¹:

Delete all material and insert:

"Sec. 11.31.125. DURATION OF CONSPIRACY FOR PURPOSES OF LIMITATIONS OF ACTIONS. (a) For purposes of applying AS 12.10 governing limitations of actions, in a prosecution under AS 11.31.120, the statute of limitations begins to run

(1) when all the crimes that are serious felony offenses that are its objects are completed;

(2) if all the crimes that are its objects are not completed, when the last overt act in furtherance of the conspiracy is done by the defendant or any of the other coconspirators; or

(3) the defendant informs law enforcement authorities of the existence of the conspiracy and of the defendant's participation in it.

new #5 A

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSSB 19(FIN) am

Page 3, line ¹³10, through line ²¹18:

Delete all material and insert:

"Sec. 11.31.125. DURATION OF CONSPIRACY FOR PURPOSES OF LIMITATIONS OF ACTIONS. (a) For purposes of applying AS 12.10 governing limitations of actions, in a prosecution under AS 11.31.120, the statute of limitations begins to run

(1) when all the crimes that are serious felony offenses that are its objects are completed;

(2) if all the crimes that are its objects are not completed, when the last overt act in furtherance of the conspiracy is done by the defendant or any of the other coconspirators; or

(3) the defendant informs law enforcement authorities of the existence of the conspiracy and of the defendant's participation in it.

BY THE SENATE FINANCE COMMITTEE

Letter of Intent

It is the intent of the Senate Finance Committee that law enforcement techniques employed in investigations of criminal conspiracy as defined in Senate Bill 19 should be consistent with the protections against police entrapment under AS 11.81.450.

Senate adopted 3/9
Senate adopted 3/10



ALASKA STATE LEGISLATURE

Senator Rick Halford

President of the Senate

While in Session:
State Capitol
Juneau, AK 99801-1182
907-465-4958

While in Interim:
P.O. Box 670190
Chugiak, AK 99567
907-694-4958

MEMORANDUM

TO: Representative Ron Larson, Co-Chairman
Representative Eileen MacLean, Co-Chairman
Representative Mark Hanley, Vice Chairman
House Finance Committee

FROM: Senator Rick Halford
President of the Senate

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

DATE: March 22, 1993

SUBJECT: CSSB 19 (FIN) am, "An Act relating to the crime of conspiracy."

Organized crime is a serious problem in Alaska and one that is becoming increasingly worse. These professional criminal organizations are difficult to prosecute or eliminate because of the separation their leadership maintains from the crimes that subordinate members of the organization routinely commit. In order to circumvent this organizational defense mechanism, the federal government defined the crime of conspiracy some time ago and now Alaska is the only state that has not passed a similar law.

It is important that Alaska enact a conspiracy statute to provide our state and local law enforcement agencies with this valuable tool for prosecuting criminal organizations, especially drug rings.

Senate Bill 19 defines the crime of conspiracy to mean agreeing with one or more people either to commit a crime or to promote, facilitate, or cause a crime to happen if one or more of the people involved in the agreement commits an overt act to further the conspiracy. This will allow law enforcement officials to arrest and prosecute individuals before they personally attempt a crime and also without their direct participation in a crime that has already occurred. The conspiracy to commit a crime is classified one level below the class of the crime which the offender conspired to commit.

Senate Bill 19 will significantly increase the efficiency and effectiveness of the criminal justice system. Its passage will improve our position in the war against drugs by enabling the prosecution of entire drug networks, rather than merely street-level pushers. Thank you for your consideration of this legislation.

ALASKA CIVIL LIBERTIES UNION

**Legislative Committee
217 Second Street, Suite 204
Juneau, Alaska 99801
(907) 586-2701**

Position Paper in Opposition to "Conspiracy Legislation"

There are presently several bills in the legislature which would, in various forms, create the new crime of "conspiracy". The Alaska Civil Liberties Union opposes each of these bills.

Conspiracy laws have traditionally been used to punish those who associate with known criminals, or those who are suspected of crime but have not been caught doing anything which amounts to a completed crime. The ACLU believes that conspiracy laws violate the principle that criminal legislation must be carefully and narrowly drawn to insure that it does not punish constitutionally protected rights of free association under the First Amendment. Conspiracy laws generally fail this test.

Attached to this Position Paper are the official ACLU policies relating to conspiracy laws. Note that these policies emphasize the great harm that is done to free speech rights when association and speech are made punishable under the criminal statutes.

We also object to the added costs which will be incurred by the judicial and correctional systems if this legislation is adopted. It is unrealistic to believe that there will be no fiscal impact of this legislation. We understand that the fiscal notes for this legislation have been removed from the Senate bill. There will be substantial costs for additional public defenders, prosecutors, and jail space if people are charged, tried, and convicted for the crime of conspiracy. The taxpayers are entitled to a realistic and good faith estimate of the costs of these measures, and the fiscal notes previously submitted by the affected agencies should be reattached to the bills. It is simply not honest to pretend that there will not be substantial costs associated with this legislation.

- 194 -

be no less freedom for a number of persons to discuss and advocate together. Conspiracy itself -- in the sense of combination, even secret combination -- is not criminal unless its purpose is unlawful. Furthermore, even conspiracy for an unlawful purpose may not be punished until there arises a clear and present danger of an unlawful act -- in other words, until steps are taken not merely to advocate but actually to plan and carry out an unlawful act. [Board Minutes, June 25, 1951; News Release, June 28, 1951; The Smith Act and the Supreme Court, 1952.]

The ACLU also believes that the membership clause of the Smith Act is unconstitutional because the First Amendment guarantees an individual freedom of association unrelated to his or her performance of an illegal act. Guilt is personal; it may not be attributed by association. The membership clause of the Smith Act places every individual on notice that he or she joins organizations under peril of future prosecution. [ACLU Statement, July 6, 1961; Weekly Bulletin, November 28, 1955.]

* * *

(c) The Subversive Activities Control Act of 1950 (also called the Internal Security Act, or the McCarran Act), as amended by the Communist Control Act of 1954, punishes conspiracy to act to substantially contribute to the establishment in the United States of a foreign-controlled totalitarian dictatorship. In addition to sanctions against Communists in matters of immigration, travel, trade union activities, and government employment it requires all Communist-action and Communist-front groups to register with the Attorney General after a hearing before the Subversive Activities Control Board initiated by petition of the Attorney General. This entails the disclosure of the names and addresses of their expenditures, and list of their printing presses. [Annual Report, 1951-1953.] (See also policy on Restrictions on Union Members and Officers, on Freedom to Travel, and on Federal Employee Security.)

The ACLU believes that the Subversive Activities Control Act should be repealed, for the same civil liberties reasons which dictate the Union's opposition to the Smith Act. The Union opposes particularly the registration requirement because the resulting restrictions and penalties that fall on the members of groups so registered act to curtail the free exchange of political opinions and the freedom of peaceful political association guaranteed by the First Amendment. [Board Minutes, October 30, 1950; Weekly Bulletin, October 24, 1960.]

Regardless of what may be the Communist Party's ultimate objectives, the Party expresses opinion on a variety of social issues, such as labor relations, race discrimination, and control of atomic weapons. It holds conventions, adopts platforms, and nominates and endorses candidates. The effect of registration is to violate the First Amendment rights of the Party and its members when they express themselves and seek to influence others on non-revolutionary issues.

The Union's concern to prevent guilt by association is

ALASKA CIVIL LIBERTIES UNION

Legislative Committee

217 Second Street, Suite 204

Juneau, Alaska 99801

(907) 586-2701

Position Paper in Opposition to "Conspiracy Legislation"

There are presently several bills in the legislature which would, in various forms, create the new crime of "conspiracy". The Alaska Civil Liberties Union opposes each of these bills.

Conspiracy laws have traditionally been used to punish those who associate with known criminals, or those who are suspected of crime but have not been caught doing anything which amounts to a completed crime. The ACLU believes that conspiracy laws violate the principle that criminal legislation must be carefully and narrowly drawn to insure that it does not punish constitutionally protected rights of free association under the First Amendment. Conspiracy laws generally fail this test.

Attached to this Position Paper are the official ACLU policies relating to conspiracy laws. Note that these policies emphasize the great harm that is done to free speech rights when association and speech are made punishable under the criminal statutes.

We also object to the added costs which will be incurred by the judicial and correctional systems if this legislation is adopted. It is unrealistic to believe that there will be no fiscal impact of this legislation. We understand that the fiscal notes for this legislation have been removed from the Senate bill. There will be substantial costs for additional public defenders, prosecutors, and jail space if people are charged, tried, and convicted for the crime of conspiracy. The taxpayers are entitled to a realistic and good faith estimate of the costs of these measures, and the fiscal notes previously submitted by the affected agencies should be reattached to the bills. It is simply not honest to pretend that there will not be substantial costs associated with this legislation.

- 193 -

**Smith Act and Subversive Activities Control Act
of 1950**

Policy #105

(a) No penalties should be imposed on organizations in this country which advocate a particular economic or social or political philosophy. The government may act against any group only when its advocacy leaves the realm of philosophical debate and becomes immediately dangerous by inciting to overt illegal action.

The ACLU's opposition to the Smith Act, the Subversive Activities Control Act of 1950, and the Communist Control Act of 1954 is grounded solely on the free speech principle that there should be no governmental restriction on advocacy of any sort, unless the advocacy shall cause, in the existing circumstances of its utterances, a clear and present danger of illegal action. [Board Minutes, December 22, 1930; ACLU Statement, July 6, 1961; News Release, August 11, 1961.]

(See also policy on Clear and Present Danger Test.)

* * *

(b) The Alien Registration Act of 1940, the Smith Act, makes it a felony to advocate or conspire to advocate the overthrow of the United States government by force, or to be an organizer or knowing member of a group which so advocates. The ACLU believes that the act is unconstitutional under the First Amendment because it censors the advocacy of ideas, regardless of the power of the advocates to bring about the forbidden result. Advocacy of the violent overthrow of the government is as constitutionally protected as the advocacy of any other political or social or economic idea, in the absence of finding of clear and present danger of action to translate the idea into an illegal act. Furthermore, the statute is so broadly drawn that it operates without regard to the existence of a state of public emergency or any distinction between the street-corner pamphleteer and the skilled agitator. [Board Minutes, April 3, 1950; News Release, June 20, 1950; Annual Report, 1951-1953.]

In 1951 the ACLU made the following detailed criticisms of the Smith Act and its interpretation by the Supreme Court:

1) It is difficult, if not impossible, to obtain enough reliable evidence on the intent with which a given statement was made to justify a generalized constitutional or statutory distinction between "discussion" -- to be considered protected under the First Amendment -- and "advocacy" -- to be punished under the Smith Act.

2) The clear and present danger rule must not be emasculated by interpretation to mean clear and probable danger. Speech advocating treason is inviolate until such time as there arises a present danger of treasonable acts. Clear and present danger, because it is the very keystone of the distinction between protected and unprotected speech, is properly a question of fact to be determined by a jury.

3) If one person may "discuss" and "advocate," there should

- 194 -

be no less freedom for a number of persons to discuss and advocate together. Conspiracy itself -- in the sense of combination, even secret combination -- is not criminal unless its purpose is unlawful. Furthermore, even conspiracy for an unlawful purpose may not be punished until there arises a clear and present danger of an unlawful act -- in other words, until steps are taken not merely to advocate but actually to plan and carry out an unlawful act. [Board Minutes, June 25, 1951; News Release, June 28, 1951; The Smith Act and the Supreme Court, 1952.]

The ACLU also believes that the membership clause of the Smith Act is unconstitutional because the First Amendment guarantees an individual freedom of association unrelated to his or her performance of an illegal act. Guilt is personal; it may not be attributed by association. The membership clause of the Smith Act places every individual on notice that he or she joins organizations under peril of future prosecution. [ACLU Statement, July 6, 1961; Weekly Bulletin, November 28, 1955.]

* * *

(c) The Subversive Activities Control Act of 1950 (also called the Internal Security Act, or the McCarran Act), as amended by the Communist Control Act of 1954, punishes conspiracy to act to substantially contribute to the establishment in the United States of a foreign-controlled totalitarian dictatorship. In addition to sanctions against Communists in matters of immigration, travel, trade union activities, and government employment it requires all Communist-action and Communist-front groups to register with the Attorney General after a hearing before the Subversive Activities Control Board initiated by petition of the Attorney General. This entails the disclosure of the names and addresses of their expenditures, and list of their printing presses. [Annual Report, 1951-1953.] (See also policy on Restrictions on Union Members and Officers, on Freedom to Travel, and on Federal Employee Security.)

The ACLU believes that the Subversive Activities Control Act should be repealed, for the same civil liberties reasons which dictate the Union's opposition to the Smith Act. The Union opposes particularly the registration requirement because the resulting restrictions and penalties that fall on the members of groups so registered act to curtail the free exchange of political opinions and the freedom of peaceful political association guaranteed by the First Amendment. [Board Minutes, October 30, 1950; Weekly Bulletin, October 24, 1960.]

Regardless of what may be the Communist Party's ultimate objectives, the Party expresses opinion on a variety of social issues, such as labor relations, race discrimination, and control of atomic weapons. It holds conventions, adopts platforms, and nominates and endorses candidates. The effect of registration is to violate the First Amendment rights of the Party and its members when they express themselves and seek to influence others on non-revolutionary issues.

The Union's concern to prevent guilt by association is

- 195 -

pointedly illustrated by the Act's penalization of individuals solely for holding views on current issues which coincide with those of a Communist organization or of Russia, since a person's support of any of the Communist Party's "purposes" is considered as evidence of membership in the Party. [News Release, April 2, 1954.]

Registration has further unconstitutional implications. An individual who, in signing a registration statement, admits to affiliation with a Communist-action group may well be giving the government just the evidence it needs to prosecute the person for a federal crime, such as violation of the Smith Act or of the 1950 Act itself. Not only is the individual engaging in personal incrimination -- in contravention of the protection against self-incrimination guaranteed by the Fifth Amendment -- but the disclosure of information required by the statement incriminates all other officers and members and other persons associated with the group. The government is thus using the artificial, juridical personality of the group, inserted between itself and the group's members, to get the very same incriminating evidence it cannot get from the members directly. The issue of self-incrimination cannot be separated from the question of the constitutionality of the registration provision. (The Supreme Court agreed with this view in 1965 when it held unenforceable that section of the Act requiring individuals to register. However, the Union has pressed the same objections against a subsequent revision of the Act whereby the government may undertake the registration of Communist groups by itself.) [ACLU Statement, July 6, 1961; News Release, May 23, 1963; ACLU amicus brief, Boorda vs. SACB, 1969.]

Perhaps most serious of all is the registration requirement for Communist-front groups. Unlike a Communist-action organization, a Communist-front group is by definition only indirectly related to a foreign power bent on the forcible overthrow of the United States government, and does not operate to advance the objectives of world Communism but only to aid and support them. These definitions are so vague that no clearly ascertainable standard is provided, thus violating the due process clause of the Fifth Amendment. The Act deprives these groups of their constitutional rights of free speech and association, removes from the people of this country their right to judge ideas on their merits, and empowers the government to label ideas as noxious solely because of their source. All of this is accomplished without any showing of clear and present danger or proof that narrower and more direct means, whose effects would be closer to the claimed point of danger, are inadequate to cope with any actual threat of forcible overthrow. [News Release, November 26, 1964.]

Similar objections are raised by the law requiring registration of persons trained by foreign governments in espionage or sabotage. Aside from the obvious impossibility of ever enforcing such a requirement, registration under the law would be an unjustified invasion of privacy, and would in some cases involve the privilege against self-incrimination in a manner similar to problems of self-incrimination raised by the

- 196 -

Subversive Activities Control Act. [Board Minutes, October 20, 1958.]

The Union also opposes that part of the 1950 Act which is known as the Emergency Detention Act, authorizing, in the event of invasion, declared war, or insurrection in aid of a foreign enemy, the imprisonment of anyone "as to whom there is reasonable ground to believe...probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage." The Union's objections are twofold: first, because the Act allows imprisonment where crimes are predicted but not committed, and second, because it denies due process in permitting detention on the basis of undisclosed facts. As with the other sections of the 1950 Act, the victims of the emergency detention provisions are chosen solely on the basis of their political associations and beliefs, actual or only suspected. Under present circumstances these victims might include not only Communists and leftists but also war dissenters and members of black power organizations. [Board Minutes, January 22, 1951, December 21, 1967, March 14, 1968, May 23, 1968, June 13, 1968.]

Loyalty and Security

Policy #103

Clear and Present Danger Test

Expressions of opinion, whether made in public or private, are protected by the First and Fourteenth Amendments, except when:

- 1) They become an integral part of conduct violating a valid law, or
- 2) They are a direct incitement to specific and immediate violation of law; or
- 3) They threaten a danger of unlawful acts so great and so immediate that time is lacking for answer, or if need be, for other protective measures against the threatened acts.

Secrecy or anonymity in expressions of opinion or in advocacy is not in itself a barrier to the protection of the First and Fourteenth Amendments. (See also policy on Anonymity and Disclosure.)

Conspiracy is not properly chargeable to persons associated together in the expressions of their opinions or in advocacies except where incitements to or plans for specific unlawful act create the clear and present danger of such acts.

These principles protect anti-demoncratic speech equally with pro-democratic speech.

These principles, which together constitute the "clear and present danger" test, should be applied to safeguard the widest possible freedom of discussion and advocacy. [Board Minutes, July 25, 1949; Minutes of Free Speech Committee, January 20, 1955.]

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 23, 1993

SUBJECT: Sectional Summary of CSSB 19 (FIN) am (Work Order No. 8-LS0246J)

TO: Senator Rick Halford
Attn: John

FROM: Jerry Luckhaupt *JER*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill creates AS 11.31.120, the crime of conspiracy and AS 11.31.125, duration of conspiracy for purposes of limitations of actions. AS 11.31.120 would make it a crime for a person with the intent to promote or facilitate a serious felony offense, to agree with one or more other persons to engage in or cause the performance of that serious felony offense, and an overt act in furtherance of the conspiracy is performed by one of the persons involved in the conspiracy. AS 11.31.120 clarifies criminal liability for certain situations, provides affirmative defenses that may be raised by the defendant, and defines "overt act in furtherance of the conspiracy" and "serious felony offense." AS 11.31.120 also provides that venue may not solely be based upon overt acts done in furtherance of the conspiracy. Conspiracy is punishable as an unclassified, class A, class B or class C felony depending on the classification of the crime that was the object of the conspiracy. AS 11.31.125 clarifies when the statute of limitations begins to run by defining when the crime of conspiracy is completed.

Section 2 of the bill amends AS 11.31.140(a) to provide that it is not a defense to a prosecution for conspiracy that the crime the defendant conspired to commit was actually committed.

Senator Rick Halford
March 23, 1993
Page 2

Section 3 of the bill amends AS 11.31.140(b) to provide only one conviction for conspiracy, attempt, or solicitation is permitted for conduct that was designed to commit the same crime.

Section 4 of the bill amends AS 11.31.140(d) permits a prosecutor to charge both conspiracy to commit an offense and commission of the underlying offense.

Section 5 of the bill amends AS 12.25.125(b) to provide that a person convicted of conspiracy to commit murder in the first degree shall be sentenced to a definite term of imprisonment of not less than five years and not more than 99 years.

GPL:gc
93-261.glc

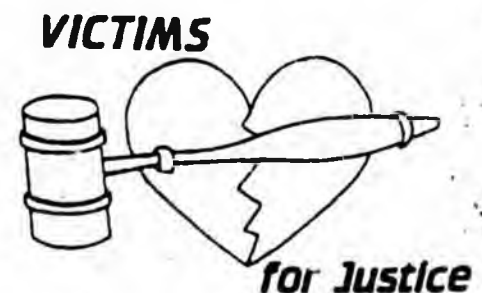
RECEIVED
MAR 11 1993
Ass'd.....



**POSITION STATEMENT
FROM THE COALITION OF**

**THE ALASKA PEACE OFFICER'S ASSOCIATION
and MOTHERS AGAINST DRUNK DRIVERS**

before the
19th Alaska Legislature
March 1993



CONSPIRACY

Law Enforcement officers are dealing with people who in increasing numbers act in concert to commit crimes, usually homicide and drug offenses. There appears to be a lot of misconceptions about conspiracy legislation and the following is an effort to "de-mystify" it.

Black's law dictionary defines "conspiracy" as, "A combination or confederation between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful.

FICTION

People will get charged for "thinking about a crime".

FACT

By definition two or more people must act together by committing an overt act with the intention of violating a law.

FICTION

The current laws relating to aiding and abetting suffice.

FACT

Under Alaska's aiding and abetting statute, a person is legally accountable for the conduct of another constituting an offense if that person acts with a specific "intent to promote or facilitate the commission of the offense." When several persons combine to violate the law, the police will seldom be able to show that each of the co-conspirators acted with a specific intent to promote the commission of the crime.

Simply put, our aiding and abetting law places too great a burden on law enforcement. A conspiracy statute would permit prosecution of those who acted "knowingly" to violate the law even though they may not have "intended" the result. In short, those who act with guilty knowledge could be punished.

Under aiding and abetting, all participants must act with a specific intent to accomplish the target offense. A conspiracy may be a continuing one; actors may drop out, and others drop in; the details of the operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose.

This legislation also creates a separate crime of conspiracy which is a crime different from the target offense.

We are long overdue for this legislation. Alaska is the only state that does not have conspiracy legislation. The US Congress long ago promulgated a strong conspiracy statute. Forty-nine other states and the US Congress can't be wrong. This legislation is imperative for law enforcement in Alaska to do its job effectively.

Alaska Association Chiefs of Police



February 4, 1993

Senator Rick Halford
Alaska State Capitol
Room 111
Juneau, AK 99801-1182

Dear Senator Halford:

On behalf of the Alaska Association of Chiefs of Police I would like to express our support for Senate Bill 19. For several years Alaskan law enforcement has been united in its request to the legislature for a Statute dealing with the Crime of Conspiracy.

There have been many serious felony crimes committed over the years that may well not have occurred if law enforcement had been able to pursue the offenders utilizing a Conspiracy Statute. Limiting conspiracy to serious felony offenses only is a sensible approach that should alleviate some past concerns.

If we can be of any assistance in the passage of your bill please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald L. Otte", is written over a horizontal line.

Ronald L. Otte
President

RLO/lp

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 99507
PHONE: (907)

269-5641

February 20, 1992

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

Dear Senator Halford:

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

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

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

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

Sincerely,

John R. Murphy
Colonel John R. Murphy
Director

cc: Commissioner Burton

Post-It™ brand fax transmittal memo 7671 # of pages > 2

To <i>Sen. Halford</i>	From <i>Col. Murphy</i>
Co.	Co.
Dept.	Phone #
Fax #	Fax # <i>465-3805</i>

LETTER OF SUPPORT STATE TROOPERS ✓

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 20510-0202
(202) 224-6665

February 28, 1991

222 WEST 7TH AVENUE, BOX 1
ANCHORAGE, AK 99513-7570
(907) 271-3735

101 12TH AVENUE, BOX 7
FAIRBANKS, AK 99701-6278
(907) 458-0233

P.O. Box 21647
JUNEAU, AK 99802-1647
(907) 586-7400

130 TRADING BAY ROAD, SUITE 350
KENAI, AK 99611-7716
(907) 283-5808

109 MAIN STREET
KETCHIKAN, AK 99901-6489
(907) 225-6880

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

Dear Senator Halford:

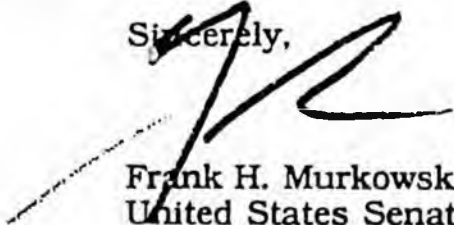
When I had the opportunity to speak before the State Legislature earlier this month, I expressed my deep concern about the escalation of drug activity in Alaska. We must recognize that the weakness of our state's drug laws sends an unfortunate message to those who would traffic in illegal drugs. I applaud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

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

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

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

Sincerely,


Frank H. Murkowski
United States Senator

FBI National Academy Associates

Alaska Chapter



February 16, 1993

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

Dear Senator Halford:

The Alaska Chapter of the FBI National Academy Associates is once again supporting Senate Bill 19 (An Act relating to the Crime of Conspiracy).

Alaska's criminal justice system will be enhanced with passage of this bill. Law enforcement in Alaska requires legislation which offers the ability through the judicial system to prosecute those individuals or groups involved with the crime of conspiracy.

I have spoken with Chief O'Leary from the Anchorage Police Department and he "absolutely" supports and concurs with this legislation.

We strongly support your efforts toward passage of SB 19.

Sincerely,

Timothy W. Foster
President

TWF/ljc

Post-It® brand fax transmittal memo 7671 # of pages > 1

To: <i>John Suggard</i>	From: <i>Tim Foster</i>
Co.	Co.
Dept.	Phone #
Fax #	Fax #

FBI/AA
Officers &
Executive Board

President
Tim Foster, 180th
Anchorage Int'l Airport
Safety, P.O. Box 190829
Anchorage, Alaska 99519-0829
266-2405

Secretary
Shirley Wagner, 184th
Anchorage Police
Department,
4501 S. Bragan St.
Anchorage, Alaska
99507-1599
766-8558

John Murphy, 130th, Past President
Paul Wilson, 139th, VP, South Central
Mike Corhill, 169th, VP, Northern
Chip Galle, 163rd, VP, Southern



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, WWS

+ -AN; Cf. AGRICULTAL] —a-grav'fan-iz, adv.

a-grav'i-tan-ism (ə grāv'ē ə niz'əm), n. a movement for the equal division of landed property and for the promotion of agricultural interests. [1800-10; AGRARIAN + -ISM]

a-grav'ic (ə grāv'ik, ā grāv'-), adj. pertaining to a state or region in which the effect of gravity is zero. [A- + GRAV(ITY) + -IC]

a-gré-a-tion (ā grā ə syōn'), n., pl. -tions (-syōn'). French. the procedure followed by a government for determining the acceptability to a foreign government of a proposed envoy.

a-gree (ə grē'), v., a-greed, a-greeing. —v.t. 1. to have the same views, emotions, etc.; harmonize in opinion or feeling (often fol. by with): *I don't agree with you.* 2. to give consent; assent (often fol. by to): *He agreed to accompany the ambassador. Do you agree to the conditions?* 3. to live in concord or without contention; get along together. 4. to come to one opinion or mind; come to an arrangement or understanding; arrive at a settlement: *They have agreed on the terms of surrender.* 5. to be consistent; harmonize (usually fol. by with): *This story agrees with hers.* 6. to correspond; conform; resemble (usually fol. by with): *The play does not agree with the book.* 7. to be suitable; comply with a preference or an ability to digest (usually fol. by with): *The food did not*

agree with me. 8. Gram. to correspond in inflectional form, as in number, case, gender, or person; to show agreement. In *The boy runs*, *boy* is a singular noun and *runs* agrees with it in number. —v.i. 9. to concede; grant (usually fol. by a noun clause): *I agree that he is the ablest of us.* 10. Chiefly Brit. to consent to or concur with: *We agree the stipulations. I must agree your plans.* [1350-1400; ME *agre*, *agree* < AF, OF *agree* < from phrase *a gre* at pleasure, at will; a < L *ad* to, at *gre* < L *gratum* (see *GRE*')] —a-gree'ing-ly, adv. —Syn. 1. AGREE, CONSENT, ACCEDE, ASSENT, CONCUR all suggest complying with the idea, sentiment, or action of someone. AGREE, the general term, suggests compliance in response to any degree of persuasion or opposition; to agree to go; to agree to a meeting, to a wish, request, demand, ultimatum. CONSENT, applying to rather important matters, conveys an active and positive idea; it implies making a definite decision to comply with someone's expressed wish; to consent to become engaged. ACCEDE, a more formal word, also applies to important matters and implies a degree of yielding to conditions; to accede to terms. ASSENT conveys a more passive idea; it suggests agreeing intellectually or verbally with someone's assertion, request, etc.: to assent to a speaker's theory, to a proposed arrangement. To CONCUR is to show accord in matters of opinion, as of minds independently running along the same channels; to concur in a judgment about a painting. 5. See correspond. —Ant. 2. refuse, decline. 5. disagree.

a-gree-a-ble (ə grē'ə bal), adj. 1. to one's liking; pleasing; agreeable manners; an agreeable sensation. 2. willing or ready to agree or consent: *Are you agreeable to my plans for Saturday?* 3. suitable; conformable (usually fol. by to): *practice agreeable to theory.* [1350-1400; ME *agreeable* < AF. See AGREE, -ABLE] —a-gree'a-ble-ty, a-gree'a-ble-ness, n. —a-gree'a-bly, adv.

—Syn. 1. pleasant, likable, accommodating, gracious, amiable. 3. compatible, harmonious.

a-greed (ə grēd'), adj. arranged or set by common consent: *They met at the agreed time.* [1375-1425; late ME. See AGREE, -ED²]

a-gree-ment (ə grē'mənt), n. 1. the act of agreeing or of coming to a mutual arrangement. 2. the state of being in accord. 3. an arrangement that is accepted by all parties to a transaction. 4. a contract or other document delineating such an arrangement. 5. unanimity of opinion; harmony in feeling; agreement among the members of the faculty. 6. Gram. correspondence in number, case, gender, person, or some other formal category between syntactically connected words, esp. between one or more subordinate words and the word or words upon which they depend; selection by one word of the matching formal subclass, or category, in another word syntactically construed with the first. 7. See collective agreement. 8. Law. a. an expression of assent by two or more parties to the same object. b. the phraseology, written or oral, of an exchange of promises. [1375-1425; late ME *agreement* < MF. See AGREE, -MENT]

—Syn. 3. understanding, accord, concurrence. AGREEMENT, BARGAIN, COMPACT, CONTRACT all suggest a binding arrangement between two or more parties. AGREEMENT ranges in meaning from mutual understanding to binding obligation. BARGAIN applies particularly to agreements about buying and selling but also to haggling over terms in an agreement. COMPACT applies to treaties or alliances between nations or to solemn personal pledges. CONTRACT is used especially in law and business for such agreements as are legally enforceable. 8. settlement, treaty, pact.

Radom House, unabridged, 1993

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 China-white heroin with a street value of \$1 million per pound. The heroin conspiracy operated primarily in New York, Florida and Texas. The heroin originated in Thailand and was shipped to Anchorage via Japan and the Philippines. The conspiracy investigation involved the U.S. Attorney Offices in Texas, Hawaii, Washington, New York and Florida.

• **MUSLIM 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.