

**SB**

**70**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 16, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 5/1/97

The JUDICIARY Committee considered:

CSSB 70(JUD)

CS FOR SENATE BILL NO. 70(JUD)

DISCHARGE OF A FIREARM AT BLDGS.

"An Act relating to the discharge of firearms at or in the direction of buildings and dwellings."

recommends it be replaced with the following committee substitute HBS CSSB 70(JUD)  the same title  a new title

additional referral to \_\_\_\_\_ Committee

attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal note(s) \_\_\_\_\_

[2] fiscal note(s) DEPT OF LAW & PUB. DEF.,

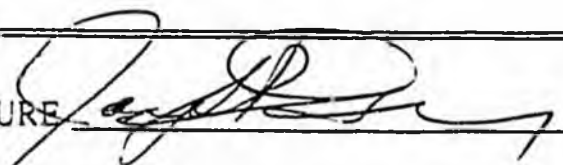
zero fiscal note(s) \_\_\_\_\_

[5] zero fiscal note(s) PUB SAFETY, HSS,

CORR., COURT & ADMIN. (OPA)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Jim Wolf</u> CROFT			✓	
<u>Ed A. East</u> BERKOWITZ			✓	
<u>Robert J. Green</u> GREEN	✓			
<u>Richard D. Porter</u> PORTER	✓			

CHAIR'S SIGNATURE \_\_\_\_\_



# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

No. 11  
Bill Version: CSB 70 (JUD)  
(S) Publish Date: 4-10-97

Revision Date: \_\_\_\_\_  
Title: An Act relating to the discharge of firearms at or in the direction of buildings and dwellings  
Sponsor: Sen. Donley  
Requestor: (S) FIN

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

COMPONENT SERIAL NO. 43

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 97) cost: \$ 0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

There is no fiscal impact to the Office of Public Advocacy.

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

Phone: 274-1684  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
Agency: Department of Administration

Date: 4/8/97

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# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

No. 10  
Bill Version: CSB 70 (Jud)  
(S) Publish Date: 4-10-97

Revision Date: 04/03/97  
Title: Unlawful Discharge of a Firearm  
Sponsor: Sen. Donlay  
Requestor: \_\_\_\_\_

Dept. Affected: Alaska Court System  
BRU: Trial Courts  
Component: \_\_\_\_\_  
COMPONENT SERIAL NO. 768

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

**Fund Source**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

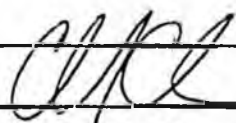
Estimate of any current year (FY 97) cost: None

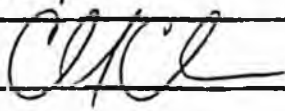
**Positions**

Full-Time						
Part-Time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

SB 70 redefines certain conduct that is already a crime, which should not result in a fiscal impact.

Prepared by: C. S. Christensen III, General Counsel   
Agency: Alaska Court System

Approved by: Stephanie J. Cole, Deputy Director   
Agency: Alaska Court System

Phone: 264-8228  
Date: 04/03/97  
Date: 04/03/97

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# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

No. 9  
Bill Version: CSSB 70 (JUD)  
(S) Publish Date: 4-10-97

Revision Date: 3/26/97 Dept. Affected: Corrections  
Title: Unlawful discharge of a firearm BRU: All  
Component: All  
Sponsor: Senator Donley  
Requester: Senate Judiciary COMPONENT SERIAL NO. #0694

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Bruce Richards Phone: 465-3307  
Division: Commissioner's Office Date: 3/26/97  
Approved by Commissioner: Margaret M. Pugh Date: 3/26/97  
Agency: Department of Corrections

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SR 70

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

No. 8  
Bill Version: CSSB 70 (JUD)  
(S) Publish Date: 4-10-97

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the discharge of firearms..."  
Sponsor: Senator Donley  
Requestor: S (FIN)

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

COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	37.5	37.5	37.5	37.5	37.5	37.5
TRAVEL	1.5	1.5	1.5	1.5	1.5	1.5
CONTRACTUAL	6.0	6.0	6.0	6.0	6.0	6.0
SUPPLIES	0.6	.6	0.6	.6	0.6	.6
EQUIPMENT	2.5	2.5	2.5	2.5	2.5	2.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>48.1</b>	<b>48.1</b>	<b>48.1</b>	<b>48.1</b>	<b>48.1</b>	<b>48.1</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	48.1	48.1	48.1	48.1	48.1	48.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>48.1</b>	<b>48.1</b>	<b>48.1</b>	<b>48.1</b>	<b>48.1</b>	<b>48.1</b>

Estimate of any current year (FY 97) cost: \$ -0-

**POSITIONS:**

FULL-TIME	0.5	0.5	0.5	0.5	0.5	0.5
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached sheet.

Prepared by: Barbara K Brink, Director  
Division: Public Defender Agency

Phone: (907) 264-4414  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
Agency: Department of Administration

Date: 4/9/97

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FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. CSSB 70 *2*

ANALYSIS: (continued)

This sponsor substitute makes it a strict liability offense to discharge a firearm at or in the direction of an occupied building, punishable by up to 10 years in jail and a \$50,000 fine. It creates an anomaly in the Alaska Statutes, which normally punish conduct by considering the perpetrator's mental state (intentional crimes are punished more severely than reckless or negligent crimes) as well as the result (the seriousness of the injury or damage).

The Department of Law has estimated an increase in the numbers of serious felony offenses due to this legislative change. Currently such an offense would not be charged or would be charged as a much less serious crime of reckless endangerment (a misdemeanor) and often prosecuted by the local municipality. The Public Defender concurs in this analysis, and predicts a serious increase in these felonies, particularly in Anchorage. Therefore, a part-time felony attorney position is requested for Anchorage.

Of note: It is questionable whether the Due Process clause of the Alaska Constitution, Art. I, Section 7 permits imposing criminal sanctions for an offense in the absence of a minimally adequate level of mens rea. (Beran v. State, 705 P.2d 1280 (Alaska App. 1985)).

# FISCAL NOTE

No. 7  
 Bill Version: CSSB 70 (JUD)  
 (S) Publish Date: 4-9-97

STATE OF ALASKA  
 1997 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act relating to the discharge of firearms  
at or in the direction of buildings and dwellings." BRU: Criminal Division  
 Sponsor: Senator Donley Component: Criminal Division  
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	53.8	53.8	53.8	53.8	53.8	53.8
TRAVEL	0.7	0.7	0.7	0.7	0.7	0.7
CONTRACTUAL	8.0	8.0	8.0	8.0	8.0	8.0
SUPPLIES	1.1	1.1	1.1	1.1	1.1	1.1
EQUIPMENT	6.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>70.0</b>	<b>63.5</b>	<b>63.5</b>	<b>63.5</b>	<b>63.5</b>	<b>63.5</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	70.0	63.5	63.5	63.5	63.5	63.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>70.0</b>	<b>63.5</b>	<b>63.5</b>	<b>63.5</b>	<b>63.5</b>	<b>63.5</b>

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

CSSB 70 (JUD) elevates the crime of discharging a firearm at or in the direction of a building, or a dwelling, from misdemeanor conduct to a class B felony. The Department of Law anticipates the greatest impact from the proposed committee substitute would be in the Anchorage area as many of these misdemeanor weapons and property crimes are most likely handed as municipal offenses under current law. CSSB 70 (JUD) would make these offenses felonies under state jurisdiction.

The department anticipates the need for one-half an attorney position in the Anchorage District Attorney's Office to respond to the increased caseload from this bill. Using the Civil Division's standard attorney cost schedule (\$127,000 per year), the fiscal impact would be \$63,500, including clerical support, communications, space, supplies, data processing and other normal overhead expenses. The standard cost does not include one-time new equipment purchases, and \$6,500 is added for this purpose in FY 98. (Proportionate support position funding is included in the standard attorney cost schedule to reduce clerical support vacancy so that the new attorney's clerical burden can be handled.)

Prepared by: Joan M. Kasson *[Signature]* Phone: 465-5370  
 Division: Administrative Services Division Date: 4/4/97  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/4/97  
 Agency: Department of Law

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STATE OF ALASKA  
1997 LEGISLATIVE SESSION

No. 5  
Bill Version: SB70  
(S) Publish Date: 2/21/97

Revision Date: \_\_\_\_\_  
Title: Discharge of a Firearm and Relating to the  
Commission of those Offenses by Minors  
Sponsor: Senator Dooley  
Requestor: Senate (HES)

Dept. Affected: Health and Social Services  
BRU: Family and Youth Services  
Component: DFYS Central Office  
COMPONENT SERIAL NO. 259  
See also (SN#): \_\_\_\_\_

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

There will be no fiscal impact on the department if this bill becomes law. While there will be no increase if this class of offenses is established, there will be no decrease in the funds required to operate DFYS if youth who commit these offenses are waived to the adult system. The department will still be faced with overcrowding in juvenile facilities and a waiting list of youth with incarceration orders even if a few more youth are waived under this bill.

*Signature*  
2/14/97

Prepared by: L. Diane Worley, Director  
Division: Family & Youth Services

Phone: 465-3191  
Date: 02/14/97

Approved by Commissioner: Karen Perdue, Commissioner  
Agency: Department of Health & Social Services

Date: 2/14/97

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# FISCAL NOTE

r 4  
 Bill Version: SB70  
 (S) Publish Date: 2/21/97

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO:**

Revision Date: 02/17/97 Dept. Affected: Public Safety  
 Title: Create Unlawful Discharge of a Firearm BRU: Alaska State Troopers  
Crimes Component: Detachments  
 Sponsor: Sen. Donley  
 Requestor: Senate HESS COMPONENT SERIAL NO. 0799

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

**FUNDING: (Thousands of Dollars)**

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

Estimate of current year (FY 97) 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.)

This bill would not have any significant impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650  
 Division: Alaska State Troopers Date: 02/17/97  
 Approved by Commissioner: Ronald L. Otte Date: 2/18/97  
 Agency: Department of Public Safety

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HOUSE CS FOR CS FOR SENATE BILL NO. 70(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS DONLEY, Pearce, Leman, Green, Wilken, Mackie, Phillips, Ellis, Ward, Duncan, Kelly

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the discharge of firearms at or in the direction of buildings  
2 and dwellings."

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

4 \* Section 1. AS 11.61.195(a) is amended to read:

5 (a) A person commits the crime of misconduct involving weapons in the  
6 second degree if the person knowingly

7 (1) possesses a firearm during the commission of an offense under  
8 AS 11.71.010 - 11.71.040; [OR]

9 (2) violates AS 11.61.200(a)(1) and is within the grounds of or on a  
10 parking lot immediately adjacent to

11 (A) a public or private preschool, elementary, junior high, or  
12 secondary school without the permission of the chief administrative officer of  
13 the school or district or the designee of the chief administrative officer; or

14 (B) a center, other than a private residence, licensed under

1 AS 47.33 or AS 47.35 or recognized by the federal government for the care of  
2 children; or

3 (3) discharges a firearm, without legal justification, at or in the  
4 direction of

5 (A) a building with reckless disregard for a risk of physical  
6 injury to a person; or

7 (B) a dwelling.

8 \* Sec. 2. AS 11.61.210(a)(3) is amended to read:

9 (3) discharges a firearm with reckless disregard for a risk of damage  
10 to property or a risk of physical injury to a person under circumstances other than  
11 those described in AS 11.61.195(a)(3)(A):



**SENATOR DAVE DONLEY**  
**ALASKA STATE LEGISLATURE**

**SPONSOR STATEMENT  
FOR SENATE BILL 70 (JUD)  
"UNLAWFUL DISCHARGES OF FIREARMS"**

Senate Bill 70 provides strong new deterrents to individuals who unlawfully discharge firearms at buildings or dwellings.

Last year an Anchorage family was awoken in the middle of the night to a barrage of gunfire. The next day, the Anchorage Police Department found five bullets lodged in various locations of the family's home. Juneau has witnessed seven separate accounts of shootings at dwellings in the last year alone. Under current state law, the unlawful discharge of a firearm at a building is only a misdemeanor.

Senate Bill 70 creates a new class B felony offense for the unlawful discharge of firearms at or in the direction of a dwelling. The legislation also creates a class B felony offense for discharging a firearm in the direction of a building and it is occupied or with reckless disregard to property or a risk of physical injury to a person.

Senate Bill 70 addresses the problem of random reckless discharges of firearms by instituting tough new penalties on those individuals who not only endanger property but innocent lives as well.

DD/jja

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**MEMBER:** Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

Produced in House

STATE OFFICE  
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



March 8, 1997

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Ketchikan  
Pres. First City Chapter

James See, Member  
Craig  
Pres. Prince of Wales Chapter

Senator Dave Donley  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Dear Senator Donley,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing Senate Bill 70 relating to the unlawful discharge of firearms at buildings. At a recent meeting of the APOA State Board Legislative Subcommittee, we decided to unanimously support this bill. We believe that this legislation will help provide stronger prosecution for offenses of this nature and will send out a clear message of deterrence.

We encourage you to call on us when there are hearings on this bill, so that we may testify about the need for this legislation. If you need assistance as you shepherd this bill through the legislative process, please call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Corkill", written over a horizontal line.

Michael Corkill  
APOA State President

**BULLETS:**  
Five shots hit  
Muldoon home

Continued from Page B-1

try to get even with a pistol in the dark of night.

If the shooter is ever caught — something they don't expect — she said she'd first ask "Why did you do it?"

"They could have killed someone," Ronald Harper said. "It's like they didn't care."

As it happened, the main casualty besides peace of mind were two stuffed animals, a whale and a dolphin, in Theresa's room. The toys were on the bookshelf above her bed, Theresa said, a few feet away from where she was sleeping. The bullet blasted their stuffing out.

"It's scary," Theresa said. The 15-year old Bartlett High School sophomore said she thought she heard the last two shots. It sounded like someone trying to break the window.

"I woke straight up. I was petrified," she said.

She never imagined such a thing could happen she said. "There's no reason for it. I don't have any enemies, and I don't think my parents do either."

Her parents said the same thing.

Ronald Harper said he called the police, who arrived a few minutes later. The police officers said it looked like the shooter was on foot, he said. Other than that, the police didn't say much.

He said he wanted other people, especially other parents, to know what had happened. Maybe if people talk about it, some clue will emerge, he said.

No further details were available from the police department on Sunday.

**Bullets  
puncture  
house**

Muldoon shooting  
perplexes family

By STEVE RINEHART  
Daily News reporter

Ronald Harper paced the walkway in front of his home in Muldoon on Sunday afternoon, pointing out the bullet holes punched through the gray aluminum siding. They were big enough to wedge a finger in; they had opened the metal siding like a can opener.

"That's the one that went through (Theresa's) bedroom," he said. "That one went over my computer."

Another went through the living room window, missing the big-screen television but gouging a trough through the woodwork. A fourth round plowed into a corner near the front door; a fifth drilled through at the right height to lodge between the upper and lower floors of the split level house on Dickerson Street, just off Turpin Street.

"The police found five (cartridge) casings in the street," he said. "I thought I heard six shots."

The Harpers — Ronald, Evangeline and their daughter, Theresa — were sleeping about 4 a.m. Sunday when they heard, and felt, the barrage. "It was like a shockwave," Ronald Harper said.

Sunday afternoon they were trying to figure out what it meant.

Evangeline Harper said she hoped the shooting was random, but no one was angry enough with them to



Small text at the bottom right of the photo: and four Anchorage Daily News

Theresa Harper, 15, holds her stuffed Shamu, which now sports bullet holes. Shamu and Flipper were on the top bookshelf, background, when they were hit.

Please see Page B-2, BULLETS

'The Voice of Alaska's Capital City'



OCT 30

## No one hurt in drive-by shooting

By SVEND HOLST

THE JUNEAU EMPIRE

Gunfire rattled through a trailer at the Switzer Creek Mobile Home Park early this morning.

Capt. Michael DeCapua, spokesman for the Juneau Police Department, said the beginning stages of the investigation unveiled no rhyme or reason for why someone fired four bullets into a trailer off one of the main drives into the park at about 4:30 a.m.

"We're early in the investigation," he said. "We have several leads at this point but we're still asking for the public's help."

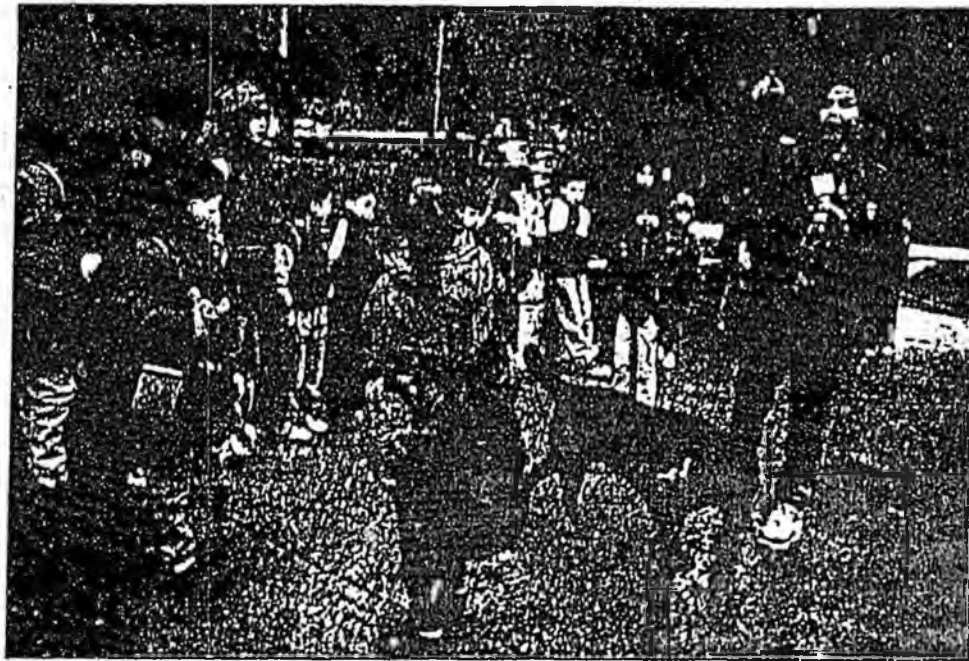
Police believe it was a drive-by shooting, DeCapua said.

None of the five occupants of the brown-and-beige trailer were injured by the flying bullets, some of which went completely through the mobile home and into another one behind it, said Sgt. Walter Bowman.

He said the shots most likely came from a street leading from the road that enters the mobile home park next to the Department of Transportation building off Glacier Highway.

Along with reports of five gun

Please see Drive-by, Page 8



MICHAEL PEHNI / JUNEAU EMPIRE

**icy spot:** Delores Wheaton, right, counts heads this morning at a bus stop on Cordova Street at Douglas Highway, where children have been falling on steep, icy sidewalks.

## Slip sliding to school

By MARK SABBATINI

THE JUNEAU EMPIRE

For 11-year-old David Jones, the ice on the steep sidewalk is something to live up the morning trip to the school bus stop.

But for parents such as Delores Wheaton, it's a nightmare waiting to happen.

A wide sidewalk in West Juneau at the intersection of Cordova Street and Douglas Highway is

the problem. Water from a hillside drains onto the sidewalk, where it is trapped by retaining walls on either side.

When it gets cold, the water freezes into a slanted slate of ice that students and other residents must cross to get to the bottom of the hill. Residents have complained to the city, but an official said responsibility lies with the homeowners beside the sidewalk.

Jones and several other students waiting at the bus stop this morning said they didn't mind the ice, stating they walked close to the edges of the sidewalk to avoid the worst of it - or intentionally slid down for fun.

"I know if I fall it was my fault because I was sliding," said Jones, a fifth-grade student at Gastineau Elementary School.

Please see Slippery, Page 8

## State coffers swell

High oil prices could balance the budget

By MARK SABBATINI

THE JUNEAU EMPIRE

Continuing high oil prices are expected to earn Alaska about \$400 million extra this year, which could be enough to balance the state's budget.

The average price of Alaska North Slope crude is expected to be between \$20 and \$20.50 a barrel for the current fiscal year, which began July 1, said Chuck Logsdon, chief petroleum economist for the state Department of Revenue.

The initial projected price was \$16.67 a barrel.

"That's a significantly higher price than I think most analysts, including ourselves, thought was possible when we were assessing the situation last year," he said today from Anchorage.

Logsdon said an increase of \$1 a barrel results in an additional \$100 million for the state. On Tuesday, prices were nearly \$23 a barrel.

Fluctuating oil prices mean the projected spending gap in the state's \$2.4-billion budget is a moving target, since 80 percent of Alaska's revenue comes from oil. Officials have previously placed

Please see Oil, Page 8

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The island and cove on Seymour Canal, about 25 miles southwest of Juneau, had been closed to hunting since 1984. In the time since then, the state game warden, Forest Service created the Stan Price Sitka Game Sanctuary, which has become an increasingly popular brown-bear viewing area on the beach of the canal and part way up Pack Creek. About 95 square miles around the area are closed to hunting.

Dinneford said public testimony at the Sitka meeting leaned in favor of keeping the area closed.

Murray, who traveled to Sitka to speak in favor of his proposal, said he wasn't surprised by the vote, "but you always hope."

He said state wildlife officials offered no biological reason to keep the area closed, so the vote by board members was in response to anti-hunting lobbying.

Murray's proposal was opposed by Fish and Game's Wildlife Conservation Division.

Murray said he is looking at other options to try

ne was opposed by the Juneau Audubon Society, Trail Mix and several people who testified at the meeting opposing the plan.

Trails include Perseverance, Mount Roberts, Moller, Point Bishop, Point Bridget, Eagle River and Herbert River. The Game Board voted in 1988 to prohibit trapping within one-quarter mile of those trails.

In Juneau, trappers are usually after marten, mink or river otters.

Fish and Game's Wildlife Conservation Division proposed allowing trapping, if traps were set at least 100 feet away from a trail. Under its plan, traps between 100 feet and one-quarter mile from the trail would be set at least four feet above the ground.

The provision was to ensure pets and small children wouldn't accidentally get caught.

A number of trails don't have the quarter-mile restriction, including Montana Creek, East and West Glacier trails, Salmon Creek, Treadwell Ditch, Mount Juneau and Mount Jumbo.

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## Slippery sidewalk...

Continued from Page 1

That's little consolation for Wheaton, a member of the Gastineau Site Council who supervises an estimated 30 elementary kids at the bus stop each morning.

"Three kids fell yesterday," Wheaton said. "I'm surprised they didn't get hurt. (The city) is going to hear about it if somebody gets hurt."

Wheaton said many seniors live at the Cedar Park apartment complex nearby and have to descend the hill to reach the city bus stop. She said several have asked for help in getting past the ice.

The problem appears to stem from the rebuilding of the house

adjacent to the sidewalk about two years ago, said Kerry Finley, assistant street superintendent for the city. He said drainage from the foundation and gravel driveway runs onto the sidewalk, and the property owners need to build a catch basin to divert the water to the bottom of the hill.

A city engineer is working with the homeowners to try to resolve the problem, Finley said.

"It's one of those areas where we've fought the ice over there," he said. "We haven't realized where it's coming from until now."

Jeanne Farrell said there is nothing that can be done with the home or the driveway she and her husband, T.J., purchased a year

ago to solve the problem. She said the drainage comes from the hill next to her house and the city's rebuilding of the sidewalk is at fault.

"I don't know what happened when the city put in the retaining walls, why they didn't put in a better drainage system," she said.

Residents in the neighborhood said the problems began after the sidewalk reconstruction occurred a few years ago.

Finley said the city is putting sand and chemicals on the sidewalk to make it safer. Wheaton said she has not noticed any such efforts until this morning, when temperatures were above freezing and ice was not a threat.

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## Drive-by shooting...

Continued from Page 1  
shots, mobile home park residents said, police a speeding vehicle was seen leaving the area.

The number of bullets fired was yet to be confirmed, Bowman said.

"Bullets are hard to see sometimes," he said.

Police numbered the four bullet holes in the trailer they've found so far with orange paint. They were spaced along the length of the trailer about four feet from the ground.

Inside the house, Bowman

said, some clothes and a refrigerator were hit by the bullets. It was a drive-by shooting. It happened in the morning, he said.

Rafael Flores, 30, moved into a trailer with his wife and two children near the bullet-riddled home this month. He'd been told, he said, it was a quiet neighborhood.

"It was a strong weapon," he said. "It's scary."

Walking with two children she was baby-sitting this morning, Cindy Germain was also frightened by the early morning shots.

Her sister-in-law lives in the home hit by the bullets after they passed by the trailer. "This is too close to home," she said. "After waking to the sound of gunfire, she heard of another shot fired while listening to a police scanner."

That shot was near Vanderbilt Hill, on the other side of Lemon Creek, said DeCapua. Police, however, are not sure if the two shootings are related. Police have yet to determine the caliber of the bullets recovered this morning.

## Moggie is back at Ketchikan cafe

THE ASSOCIATED PRESS

KETCHIKAN - A familiar pooch is back guarding his owners' downtown coffee shop - legally. Moggie, a golden retriever, had been ousted from his longtime post after animal control authorities decided to enforce the local leash laws.

But the dog got a dispensation under a new law exempting canines that prove they can obey voice commands and aren't aggressive.

So now he's back lounging at the familiar spot in front of Moggie's Mochas, Mugs and

More.

"He went out and he took his test on Thursday and he earned license number 0001," said Joyce Hazelquist, who with her husband Don owns the dog and the coffee shop. "He's just as happy as can be."

SEASON'S EATINGS  
Holiday Dining Guide

ALASKA

**The Paper publishes final edition**

■ *Without some major investors, editor says weekly cannot survive*

By LORI THOMSON  
THE JUNEAU EMPIRE

As subscribers to The Paper read today's final edition, the weekly newspaper's staff will begin shutting down its office on Third and Franklin streets.

The weekly announced earlier this month it was seeking \$100,000 to keep the newspaper open. Ten different small investors committed a total of \$12,000 to \$15,000 to the publication since then, but no major investors came forward, said editor Larry Persily.

"I don't see anyone coming in to carry us through a second year," Persily said Thursday afternoon. "It's silly to run another month or two to spend all the money we have just to prove we can go 15½ months instead of 14."

Advertising revenue for the weekly fell short of expectations. Persily has attributing that to advertisers being cautious because The Paper was the new publication on the block.

Launched on Nov. 22, 1995, The Paper faced competition from the daily Juneau Empire and the free Capital City Weekly, as well as radio stations.

Empire Publisher John Winters said he did not think a town of 30,000 people could support two newspapers, when even big cities often cannot.

"We're sorry when any newspaper folds, but I did not think from day one this size market could support two weeklies and a daily," Winters said.

Having started with six full-time staff members, The Paper's staff was cut to two full-time and three "very part-time" employees, Persily said.

Persily and his staff will probably spend the next month

**Around Juneau**

**Tank leaks oil into Gastineau Channel**

**JUNEAU** - A leaking oil tank at a home above Aurora Harbor sent diesel fuel into Gastineau Channel on Thursday morning.

A large sheen was seen at Aurora Harbor at about 8 a.m., and the U.S. Coast Guard's Marine Safety Office, the city and the state Department of Environmental Conservation launched an investigation, said Ensign Vivianne Louie of the Marine Safety Office.

They traced the diesel up through a storm drain to a leaking home heating tank on Judy Lane, four blocks up-slope from Juneau-Douglas High School.

"Even a pin-hole leak will empty a whole tank," Louie said. "Not all four hundred gallons got in the water. Most of it, I would say, is in the storm drain system."

Thursday, the Coast Guard estimated less than five gallons of diesel made it into the channel, but no more specific estimate was available today.

The cost of the 400 gallons of diesel is about \$430. But, Louie said, the homeowner may end up paying thousands of dollars to clean up the spill.

**Second trailer was hit by shots**

**JUNEAU** - Police investigators have determined the second trailer hit by gunfire Thursday morning at the Switzer Village Mobile Home Park was struck by shotgun shot.

A third trailer may also have been hit by a projectile fired at a neighboring mobile home, police said today.

After responding to a report of a mobile home being shot up on Blue Jay Way, another report came in from the residents of a trailer close to the center of the park. Police found five holes, believed to have come from a shotgun blast, in the window of the trailer, said police spokesman Michael DeCapua.

At about 8:30 a.m., a resident next door to the second trailer hit by gunfire said his home had been hit as well, said Lt. Ron Forneris, an investigator for the Juneau Police department.

"The resident feels the event just occurred and was contemporaneous with the other event," he said. The bullet, which did not appear to be from a shotgun shell, was of a large caliber, but didn't penetrate into the trailer very far, he said.

Forneris said police have not been able to determine whether the bullet that was lodged in the trailer was related to the other shooting, or whether it was a recently fired shot or not. It's possible, he said, that the bullet hit the trailer at some point before Thursday, but was only noticed by the home's owner then.

The trailer on Blue Jay Way sustained a dozen holes in a window that faced the road.

**Landslide expert in Juneau**

**JUNEAU** - A Colorado consultant is assessing the slide danger for homes in the White Subdivision today.

The city flew Arthur Mears, co-author of a 1992 study on Juneau landslide and avalanche hazards, here to evaluate how tree cutting above the White Subdivision might have impacted their risk, said city engineer Ben Pollard.

Mears will meet with White Subdivision residents at 5 this evening in Juneau Assembly chambers to give his report and answer questions.



PHOTO BY THE JUNEAU EMPIRE  
Juneau Police display confiscated Thursday students were having lunch break.

**case**

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see see Oil, Page 6

We've got some real talent here."

Echo Bay Mines Ltd.'s board of directors decided this week to write off the Alaska-Juneau gold mine near downtown Juneau because feasibility studies showed it would be unprofitable to reopen.

No one has been laid off yet, and company officials say they are still evaluating what to do next - redesign the project, sell it or close it. However, Bill

Goodhard, project manager for Echo Bay Alaska Inc., said because the board is writing the project off, the local office is "prepared to move toward closure."

Jill Paukert, a spokeswoman for Echo Bay corporate offices in Englewood, Colo., said there is no timeline for when a definite decision will be made.

awhile, regardless of the decision the company eventually makes, because even if the mine closes, there will be work associated with the closure for some time.

But he doesn't want to lose touch with co-workers he's grown close to, whom he fears will have to leave town to find work.

"They go someplace else and you never see them again," Farrell said.

It's also difficult to watch

was among about 12 employees laid off from Echo Bay last year, said she had hoped to go back to work there, but she was not shocked at the news.

"I think the writing was on the wall months ago," she said. "The feasibility studies weren't coming back really well. I didn't know for a fact, but I wasn't holding my breath."

Gallagher and Farrell said  
Please see Echo Bay, Page 6

## A taste of racial injustice brings message home

By CATHY BROWN  
THE JUNEAU EMPIRE

It was a small injustice - some kids got a Hershey's kiss and others didn't - but it was enough to get Chris Ruiz's attention.

"It wasn't fair," the second-grader protested. "... I felt like a prisoner."

The only reason he didn't get candy right away was because he had the bad luck to get a green piece of paper taped under his chair, instead of a red one.

John Cashen also got green paper. "I was sad. I felt left out,"



the little boy said.

Second-grade Harborview Elementary School teacher Twyla Alexander set up the exercise to show her students what discrimination feels like and to teach them why Americans celebrate the birthday of civil rights leader Martin Luther King Jr.

Several teachers in the Juneau School District have spent time this week talking to their students about King, the non-violent protests he advocated and the reasons behind the civil

Please see Lesson, Page 6

## Shots fired at Switzer

Police say two trailers were hit in mobile home park

By SVEND HOLST  
THE JUNEAU EMPIRE

A shotgun was apparently used to blow holes in two trailers at the Switzer Village Mobile Home Park early this morning.

Reports of the first shooting came into police at about 1:45 a.m. from a woman living in a mobile home in the Blue Jay Way area of the park, which is close to Dzantik'i Heeni Middle School, according to Capt. Michael DeCapua, spokesman for the Juneau Police Department.

She said someone had fired a gun at her trailer.

Residents of another mobile

home in the same area called police later in the morning to report finding bullet holes in their trailer as well.

Details on the second incident were sketchy this morning as police, in patrol cars and on foot, combed the neighborhood. However, a shotgun seems to have been used in both shootings.

"We are working on a number of leads at this point," DeCapua said. As always, police are asking for anyone who may know anything about the shootings to call them.

He said investigators aren't sure if the shootings were drive-bys, and have not determined if the incidents were related to previous Switzer shootings or to gang activity.

Please see Shots, Page 6

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COMPLIMENTS OF THE  
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# SPOTLIGHT

COMPLIMENTS OF THE ALASKA STATE LIBRARY

# SWITZER ROULETTE

By SVEND HOLST

THE JUNEAU EMPIRE

**Shots in the dark.** Bands of unruly teenagers. Children harassed by bullies on their way to and from school.

For some, life at the Switzer Village Mobile Home Park is becoming tense. For some, the sound of a car driving by is frightening.

Since last February, gunfire has put holes - bullet holes - in six trailers at the 300-lot trailer park, according to police. Several residents of the park said the bullets and other problems, such as vandalism, harassment and drugs, stem from unsupervised teen-agers, hooligans, who liken themselves to gangsters.

The president of the mobile home park's newly formed neighborhood watch group is worried that if his name or face were in the newspaper, a bullet could find its way into his trailer, which nine people call home.

"If they shot through my trailer, they aren't going to miss," he said. "This is scary."

When he sees the glare of headlights shine through his kitchen window, he said he gets jumpy. Since the last shooting, last week, the neighborhood watch patrols have stopped, he said. People don't want to put themselves at risk.

It's just a matter of time, he said, before someone gets hit by one of the bullets flying around Switzer. It's just a matter of time, he said, before someone gets killed.

Inside the Blue Jay Way trailer, the trail of shot from a shotgun blast runs through the front window, the kitchen, the living room and the bathroom. The frame of a picture of a baby granddaughter hangs crooked on the wall. It's been shattered by shot.

The gunshot came at about 2 a.m. Thursday. A boy was asleep on a couch just below the path of the pellets. Neighbors saw a vehicle leaving the scene, but police haven't found out who the gunman was.

A woman with a large family lives there. She spent her first night back at the home Saturday, but said she couldn't sleep until the sun came up. She has no idea why anyone would target her home, or would fire on the photograph of her granddaughter.

She lived at Switzer in the 1980s, and moved back recently.

"Switzer has changed significantly," she said. "We liked living in Switzer. I always thought that the people here were, basically, good people. I'm thinking now of selling the place."

The shooting left a scar on her mind in much the same way it left holes in her ceiling and window. She said she spends a lot of her time since the shooting in the part of the trailer furthest from the road.

"Psychologically, it leaves an imprint," she said.

She wants people to call the police, and tell them what's going on. She wants the perpetrators, who she said may be "kids

Matt Castillo, 19, said he's talked to law enforcement officials from a plethora of agencies, such as the Juneau police and the FBI, about the drive-by shooting of his trailer in October.

He thinks the shooters are wannabes - youths who call themselves gang members, but are still trying to figure out how to do it. He gave police, who he said are probably embarrassed by the violence, the names of the kids he thought might be involved.

"They're probably just bored," he said of the shooters. "They're just doing it for fun."

He said one kid was bragging about shooting the gun. He wants people in Juneau to know what's happening in Switzer because it could start happening elsewhere.

"This town isn't that big," Castillo said. "People should know about it."

He, and three friends, were playing video games when the shots rang out.

They heard a car drive by on the road next to the trailer at about 4:30 a.m., he said. The car stopped, idled for a few seconds, then peeled out, Castillo said. Then bullets, four or five of them, slammed into the trailer. One of the slugs missed his head by about a foot, he said. Another hit his refrigerator. Others passed through the trailer and into one behind it.

A side effect of being the target of a drive-by, he said, is people start talking, start making assumptions and spread dark rumors. He's heard, much to his surprise, that he's a drug dealer.

Castillo said he's noticed more police patrolling Switzer, though not all residents interviewed had seen more blue-and-whites.

Police are working with the neighborhood watch group, and continue to investigate the shootings, which are the most serious crimes being perpetrated at the mobile home park and the surrounding area.

"In the Gruening Park-Switzer area we have noticed an increase in vandalism," said Capt. Michael DeCapua. "We're concerned with an increase in gang activity and juvenile delinquent activity, some of which may be drug or gang related."

Where there's juvenile crime he said, parents have to be a part of the solution.

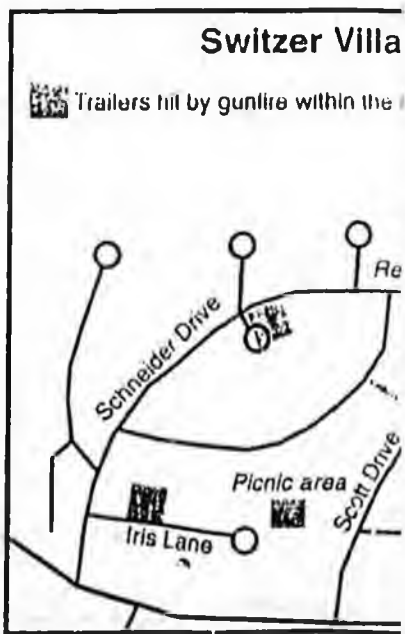
The neighborhood watch group forming at Switzer is one of three getting organized this winter. Gruening Park, neighboring Switzer, and a Douglas group are joining a dozen such neighborhood watches set up in Juneau.

The watch groups are important, DeCapua said, because police are spread thin. Usually, there are four police on patrol and one supervisor on duty. Lately, with a string of injuries and retirements sapping the Juneau Police Department of a quarter of its complement, police are being taken off investigations and out of Juneau schools to fill patrol cars.



COMPLIMENTS OF THE ALASKA STATE LIBRARY

**Hitting home;** Bullet holes in mobile home involved in a drive-by Home Park.



# Switzer residents concerned

Continued from Page 9

"We're down twenty-five percent," DeCapua said. "We're using other personnel to cover patrol. We're robbing Peter to pay Paul."

Robert Fitch, the manager of the park, took over in December. He knew he had his work cut out for him, he said. Over the years, Switzer Village had started to get a bit run down, and he thinks the place's appearance may be a part of the problem.

Along with the neighborhood watch, he's fixing landscaping, covering the mailboxes and cutting down branches so police can see into wooded areas. He's also considering fencing off areas and is figuring out where the "hot spots" are, the places where problems seem to start.

One of the hot spots at Switzer is a covered picnic area between Scott and Schneider drives. There, empty vodka bottles sit next to empty beer cans, drained 40-ounce bottles of 8.2-percent-alcohol "ice" beer, fast food wrappers and square, white plastic frames torn from CDs stolen from Kmart across the road.

"I want to clean it up," Fitch said. "I want it back to the number one park in Juneau." He said he wants residents to be able to walk around at night without worrying about getting beat up or shot. It's not as if the whole trailer park is in ruin, he said, but there's definitely room for improvement.

He said there's a corps of about a dozen kids who seem to be the main problem, and he's trying to figure out who they are.

Fitch said he's encouraged by residents who are getting involved with the neighborhood watch. At the first meeting, about eight showed up. At the last one, last month, about 60 residents came. Some think the police aren't doing enough about Switzer because it's low-income housing, but Fitch said the police are doing what they can with what they've got.

"A lot of people were upset with the police force," he said. "They asked, 'How come there aren't

enough police officers to go around?' They don't get into the budgets."

With cellular phones and cameras, he said, the neighborhood watch patrols, once they get in full swing, could be a big help. Fitch said he thinks residents should be encouraged.

Down the street from the picnic area is a trailer that took gunfire at about 4 a.m. last Feb. 28. Residents called police after they heard four or five shots.

"To us it sounded like someone hitting the trailer with a baseball bat," said a man living at the trailer Monday. "We don't know who did it. I don't know why they picked us out."

He and his family call Switzer "Dodge City." He found bullet holes in his living room. A sturdy entertainment center slowed one slug down. He gave police the names of youths he thought may have been involved. He heard of kids bragging about it. Police haven't talked to him or his family for months, he said.

Down the street from the trailer that took bullets nearly a year ago is Buddy Tabor's trailer. He said the place is a deal, but the crime is getting to be too much.

Rent for a lot at Switzer runs from \$260 to \$285 per month. That's one draw to the area, which is one of the least expensive parts of town to live in.

"It's inexpensive," Tabor said. "I have my trailer paid for. It's a fantastic deal to live here." But he's been threatened, by adults, by teen-agers near his home. One of his boys was threatened by what he considers gang members. He thinks the schools could do more to keep tabs on kids causing problems.

"A lot of this could be stopped," Tabor said. "You could mark me down as scared."

He's scared by big bands of kids hanging out. He won't heal from a beating as fast as a teen-ager might. He drives around the park now rather than walking.

The drive-bys don't scare him as much as the bands of youths, he

said.

Bob Germain said the people causing the problems are new to town, kids who don't have their head on right. He said cars driving by late at night and backfires get his attention now in a way they never did before.

Above the entryway of his home, Germain tacked up some leftover crime scene tape. Two of the bullets that went through Castillo's mobile home made it into Germain's where he, his girlfriend, three boys, ages 4, 6 and 10, and a persnickety Yorkshire terrier called April live.

"It's probably drug and alcohol related," Germain said. "Nobody in their right mind is going to go around shooting up trailers."

He said he'd like to see the street lights turned on, and can't wait for the new police station to be built in Lemon Creek. Maybe, he said, close-by cops would stop the drive-bys.

Not far from Germain's trailer police found another home, on Forget-Me-Not Drive, which took shotgun fire Thursday, DeCapua said. Police believe there may be a connection to the Blue Jay Way incident. The investigation continues.

Drena Austin called police when she found a bullet hole in her trailer, down the street from Germain's home. She's thinking about solutions.

Along with cameras at the entryways into the park, to record the coming and going of cars, Austin said, street lights, speed bumps, fences and other measures should be taken at Switzer to supplement the neighborhood watch.

"I think they could afford to make it safer," she said.

While the manager and the neighborhood watch begin their efforts, the watch's president said another home or a Switzer resident could take a bullet.

"It's going to be a little kid or a bystander who is going to die if this keeps up," he said. "I'm thinking about putting everybody in the bathtub at night. They're looking for another target. It's like a big game they're playing."

Five scenic w... have been declare... to inhabit follow... that destroyed a... and killed a family...

Officials in this... pality west of Se... homes could be... early as today, tw... equivalent of 15... loads of mud, tr... slammed into the... school science t... Herren, 43, his wa... and their sons... Cooper, 3 months... scheduled today.

"We could poss... slides to the north... Engineer Jeff Je... day. "We are ori... of January, and w... months of wet we...

A red tag bars... home until soil st... neering tests that... \$2,000 are comple... five homes were c...

As many as s... will be marked w... a warning notice... are strongly advi... mandatory, said... the top building c... officer.

The Herrens'... family was rem... the base of a blu... Bay. The family... in the basement... ied in mud and de...

Jensen said he... City Administra... about barring pe... under the bluff d... when slides are r...

"Originally... summer beach... said. "They re... meant for full-tir...

"This is such... area. It's not a... only a matter of...

The home de... slide Sunday ar... were red-tagged... 200 feet away on... tests were wa... Herrens never o... for the large bu... built in what pro... attempt to stat... Skinner said.

"The decision

The Rams don't seem to mind Vernell's lengthy absence from



# LEGAL SERVICES

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## MEMORANDUM

May 2, 1997

**SUBJECT:** HCS CSSB 70(JUD) (W.O.20-LS0272\Z)

**TO:** Representative Joe Green  
Attn: Lisa Kirsch

**FROM:** Gerald P. Luckhaupt *GL*  
Legislative Counsel

Enclosed is the HCS(JUD) you requested. I am concerned with the committee's insertion of the words "without legal justification" in sec. 2 of the bill. My concern has two bases.

First, the inclusion of "without legal justification" in sec. 2 of the bill without a corresponding inclusion in sec. 3 of the bill (sec. 3 proscribes conduct committed under circumstances other than in sec. 2) means that someone who recklessly discharges a firearm under sec. 2, with legal justification, is still subject to prosecution under sec. 3, because that reckless discharge of a firearm is under circumstances other than as described in sec. 2. If someone is legally justified in discharging a firearm, that justification should apply equally to both of these offenses. It could be interpreted not to apply equally to both offenses here due to the committee's action I have described.

Second, the placement of this justification is unnecessary as justification is already dealt with in AS 11, see AS 11.81.300 - 11.81.450, and these provisions concerning justification are fully applicable to these offenses. AS 11.81.310 provides that "[e]xcept as otherwise specified in this title, justification as provided in AS 11.81.320 - 11.81.430 is a defense."<sup>1</sup> Inserting "without legal justification" here, while not including that same language with regard to other offenses, could lead to the conclusion that the legislature does not intend for the justification to operate as a defense to other offenses where the legislature has not specifically said that legal justification is available. In my opinion, the inclusion of "without legal justification" here is unnecessary and could potentially cause problems in the implementation and enforcement of our criminal laws.

GPL:jdr  
97-324.jdr

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<sup>1</sup>My review of AS 11 has disclosed only one instance where the legislature has used the term "legal justification" when defining a crime. In AS 11.61.110(a)(6), the crime of disorderly conduct is committed when a person "recklessly creates a hazardous condition for others by an act which has no legal justification or excuse."

AMENDMENT

OFFERED IN HOUSE JUDICIARY

TO: CSSB 70 (JUD)

Page 2, line 13, following "for":

Delete "a risk of damage to property or"

Rep. Croft

Adopted  
5/1/97